

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3423. **672**

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
APPELLANT,

vs.

THE CRANFORD PAVING COMPANY, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 9, 1920.

PRINTED JULY 26, 1920.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3423.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,
APPELLANT,

vs.

THE CRANFORD PAVING COMPANY, A CORPORATION,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

Before the Court

No. 1112

THE DISTRICT OF COLUMBIA

vs.

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THE DISTRICT OF COLUMBIA

Court of Appeals of the District of Columbia.

No. 3423.

THE DISTRICT OF COLUMBIA, a Municipal Corporation, Appellant,

vs.

THE CRANFORD PAVING COMPANY, a Corporation.

a Supreme Court of the District of Columbia.

At Law. No. 58247.

THE CRANFORD PAVING COMPANY, a Corporation, Plaintiff,

vs.

THE DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Declaration.*

Filed July 19, 1915.

In the Supreme Court of the District of Columbia.

At Law. No. 58247.

THE CRANFORD PAVING COMPANY, a Corporation, Plaintiff,

vs.

THE DISTRICT OF COLUMBIA, Defendant.

The plaintiff, The Cranford Paving Company, a corporation, duly created, organized and existing under and by virtue of the laws of the State of West Virginia, and, as such corporation, doing business in the District of Columbia, sues the defendant, The District of Columbia, a municipal corporation:

Count 1. For that whereas, for many years past, to-wit, from July 1, 1888, and continuously until the happening of the certain matters hereinafter set forth, on or about September 19, 1912, and thereafter, said defendant, acting under the authority and in pursuance of the requirements of law in that behalf, has caused all of the work of resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia to be done under public advertisement for bids, and contract awarded thereunder, for periods not exceeding five (5) years; and that during the greater part of the period hereinabove mentioned, the plaintiff was either the contractor with said defendant

for the doing of the certain work aforesaid, or actually performed the same for the contractor for said work; and plaintiff says that on, to-wit, April 3, 1911, the defendant issued its certain public advertisement soliciting sealed proposals or bids for the furnishing of all necessary labor and material and the execution of the work of renewing, resurfacing and repairing asphalt pavements in said District, for the period ending June 30, 1913, with an option of extension in favor of defendant for an additional term not to exceed one (1) year from July 1, 1913; and that plaintiff, acting under the above state of both fact and law, and in response to said public advertisement, and under date April 22, 1911, submitted to defendant its certain sealed proposal and bid for the doing of the certain work aforesaid, and the same was, thereafter, April 28, 1911, duly accepted by said defendant; and, thereupon, a certain written contract, under seal, bearing date May 1, 1911, was duly entered into between said defendant and plaintiff, by the express terms whereof plaintiff, for the period or periods last herein aforesaid, covenanted and agreed to "do such work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the District of Columbia, or his duly authorized assistants," in strict accordance with the instructions to bidders, specifications, and general stipulations attached to said contract, and made part thereof, at certain prices therein stated, and which agreed prices, so far as here material, and covering the matter of repairs to asphalt pavements, were 43¢ per cubic foot for asphalt binder, and 57¢ per cubic foot for asphalt resurface or topping; and

defendant therein covenanted and agreed to pay plaintiff therefor the certain prices aforesaid; that, under paragraph 2 of the certain specifications so attached to and forming a part of said contract, as aforesaid, it was, among other things, stated that the approximate estimates of the amount of work to be done under each fiscal year of the contract, so far as said repair work is concerned, were 125,000 cubic feet of asphalt surface, and 95,000 cubic feet of asphalt binder; and, further, under paragraph 26 of said specifications, it was stated that the repair work to be done by the contractor included "the repairing of all asphalt and coal-tar pavements where defective, due to wear or accident; the repairs of all cuts such as those made for tapping sewers, water pipes, etc.; and generally all patching and miscellaneous work necessary to keep the pavements in good condition for travel during the contract period;"

and plaintiff further states that, to secure the faithful performance of all the work covered by the certain contract aforesaid, it gave bond, with approved corporate surety, conditioned in the penal sum of One Hundred and Forty-eight Thousand Dollars, (\$148,000.)

And plaintiff here brings into court and makes profert of the certain contract aforesaid, together with the certain advertisement for bids, proposal, acceptance, specifications and bond aforesaid, all attached to and made part of said contract.

And plaintiff says that, on July 1, 1911, and under and in accordance with the certain contract aforesaid, it entered upon the performance of the certain work hereinabove mentioned, and that, until the period hereinafter named, if fully performed all the needs and requirements of defendant covering the renewing, re-
4 surfacing and repairing of asphalt and coal-tar pavements in said District, as, in and by the terms and provisions of the certain contract aforesaid, it was both required and entitled to do; but plaintiff says that while so engaged, and under date September 17, 1912, the defendant caused written communication to be sent to plaintiff, advising it that, from and after September 19, 1912, and until otherwise ordered, the work of *repairs* to the asphalt pavements throughout the District of Columbia would be made by the Commissioners of said District with a portable asphalt plant; this under the assumed authority of a certain act of Congress, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved June 26, 1912, (30 stat. pt. 1, pp. 139, 150) said act having been passed subsequent to the certain contract aforesaid, and while the same was in full force and effect, and in which act was contained an appropriation of Seven Thousand five hundred Dollars (\$7,500), with authority in the Commissioners of the District of Columbia to purchase and operate a portable asphalt plant in doing such work of repairs to asphalt pavements as, in their judgment, might be economically performed by the use thereof; to which communication and notice, plaintiff, under date October 4, 1912, made reply, advising defendant that the refusal to permit plaintiff to do said repair work during the contract period aforesaid, as well — the doing thereof by the District of Columbia itself, would be a breach by the latter of its said contract to that extent and in that regard, for which plaintiff
5 would hold defendant liable for any and all damage and loss which plaintiff might sustain by reason of the breach of contract on the part of said District, as aforesaid, and further therein notifying defendant that any work so performed by it would be at its own risk and peril, and with full notice and knowledge of the rights and claims of plaintiff; and which letter and notice was duly acknowledged by defendant, by letter dated October 5, 1912.

And plaintiff says that, notwithstanding the premises, and continuously from and after said September 19, 1912, defendant wrongfully refused to permit plaintiff to do or perform any of the certain repair work aforesaid, but itself performed the same, up to and including the expiration of the original contract period, June 30, 1913,

all to the great damage, loss and injury to plaintiff, as hereinafter set forth.

And plaintiff says that, in preparation for the performance of the repair work, so embraced in the certain contract aforesaid, it incurred large expense in securing, both by purchase and contract, its necessary supply of materials for the performance of said contract; it expended further large sums of money in preparing and equipping its plant, and in purchasing two (2) specially built steam-rollers for use in said repair work, and which latter were rendered of no use to plaintiff when the repair work was so wrongfully taken away from it by defendant, as aforesaid; it was compelled to cancel a charter for a barge that had been contracted for by it to transport repair materials for use in connection with the repair work covered by said contract, and for which cancellation plaintiff was obliged to pay;

6 and plaintiff paid its bond premium on an estimated amount of work which included the contract estimate for repair work; all of which several amounts above referred to were special loss and damage sustained by plaintiff by reason of defendant's breach of contract, as aforesaid, aggregating the sum of, to-wit, Six Thousand Dollars, (\$6,000.); and, finally, plaintiff lost the gains and profits upon said repair work to which it was entitled, and which would have accrued to and been enjoyed by it but for the breach of contract by defendant, as hereinabove complained.

And plaintiff says that the certain repair work aforesaid done and performed by defendant, from September 19, 1912, to July 1, 1913, covering that part of the period and term of the original contract with plaintiff, as aforesaid, was 103,145 cubic feet; all thereof being embraced within the terms and provisions of the certain contract aforesaid, but of the doing and performing whereof plaintiff was wrongfully prevented and deprived by defendant, as hereinabove stated.

And plaintiff says that although, from the time of making the certain contract aforesaid, and throughout the entire original term thereof, as aforesaid, it well and truly performed and fulfilled all things in the said contract contained on its part to be performed and fulfilled, according to the true intent and meaning of said contract, except only as wrongfully prevented by defendant, as herein aforesaid; yet, from and after September 19, 1912, and until and including June 30, 1913, the end of the original contract period and term aforesaid, the said defendant wholly neglected, failed and re-

7 fused to perform and fulfill all things in the said contract contained on its part and behalf to be performed and fulfilled, and, without lawful right so to do, refused to permit plaintiff to perform certain parts and portions of the contract work, namely, the repairing of asphalt and coal-tar pavements in the District of Columbia, as hereinabove set forth; by means whereof, the said plaintiff has been put to great expense, has been greatly injured and damnified, and has lost sundry great gains and profits which would have arisen and accrued to it but for defendant's breach of said contract, as aforesaid, in the sum of Twenty-five Thousand Dollars, (\$25,000.).

And plaintiff claims of defendant the said sum of Twenty-five Thousand Dollars (\$25,000), besides costs.

Count 2.—For that whereas, for many years past, to-wit, from July 1, 1888, and continuously until the happening of the certain matters hereinafter set forth, on or about September 19, 1912, and thereafter, said defendant, acting under the authority and in pursuance of the requirements of law in that behalf, has caused all of the work of resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia to be done under public advertisement for bids, and contract awarded thereunder, for periods not exceeding five (5) years; and that during the greater part of the period hereinabove mentioned, the plaintiff was either the contractor with said defendant for the doing of the certain work aforesaid, or actually performed the same for the contractor for said work; and plaintiff says that on, to-wit, April 3, 1911, the defendant issued its certain other public advertisement soliciting sealed proposals

8 or bids for the furnishing of all necessary labor and material and the execution of the work of renewing, resurfacing and repairing asphalt pavements in said District, for the period ending June 30, 1913, with an option of extension in favor of defendant for an additional term not to exceed one (1) year from July 1, 1913; and that plaintiff, acting under the above state of both fact and law, and in response to said public advertisement, and under date April 22, 1911, submitted to defendant its certain other sealed proposal and bid for the doing of the certain work aforesaid, and the same was, thereafter, April 28, 1911, duly accepted by said defendant; and, thereupon, a certain other written contract, under seal, bearing date May 1, 1911, was duly entered into between said defendant and plaintiff, by the express terms whereof plaintiff, for the period or periods last herein aforesaid, covenanted and agreed to "do such work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered from time to time, by the Engineer Commissioner of the District of Columbia, or his duly authorized assistants," in strict accordance with the instructions to bidders, specifications, and general stipulations attached to said contract, and made part thereof, at certain prices therein stated, and which agreed prices, so far as here material, and covering the matter of repairs to asphalt pavements, were 43c per cubic foot for asphalt binder, and 57c per cubic foot for asphalt resurface or topping; and defendant therein covenanted and agreed to pay plaintiff therefor the certain prices aforesaid; that, under paragraph 2 of the certain

9 specifications so attached to and forming a part of said contract, as aforesaid, it was, among other things, stated that the approximate estimates of the amount of work to be done under each fiscal year of the contract, so far as said repair work is concerned, were 125,000 cubic feet of asphalt surface, and 95,000 cubic feet of asphalt binder; and further, under paragraph 26 of said specifications, it was stated that the repair work to be done by the contractor included "the repairing of all asphalt and coal-tar pavements where defective, due to wear or accident;

the repairs of all cuts such as those made for tapping sewers, water pipes, etc.; and generally all patching and miscellaneous work necessary to keep the pavements in good condition for travel during the contract period"; and plaintiff further states that, to secure the faithful performance of all the work covered by the certain contract aforesaid, it gave its certain other bond, with approved corporate surety, conditioned in the penal sum of One Hundred and Forty-eight Thousand Dollars (\$148,000).

And plaintiff here brings into court and makes profert of the certain contract aforesaid, together with the certain advertisement for bids, proposal, acceptance, specifications and bond aforesaid, all attached to and made part of said contract.

And plaintiff says that, on July 1, 1911, and under and in accordance with the certain contract aforesaid, it entered upon the performance of the certain work hereinabove mentioned, and that, until the period hereinafter named, it fully performed all the needs and requirements of defendant covering the renewing, resurfacing and repairing of asphalt and coal-tar pavements in said

10 District, as in and by the terms and provisions of the certain contract aforesaid, it was both required and entitled to do; but plaintiff says that while so engaged, and under date September 17, 1912, the defendant caused a certain other written communication to be sent to plaintiff, advising it that, from and after September 19, 1912, and until otherwise ordered, the work of repairs to the asphalt pavements throughout the District of Columbia would be made by the Commissioners of said District with a portable asphalt plant; this under the assumed authority of a certain act of Congress, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved June 26, 1912 (30 Stat. pt. 1 pp. 139, 150), said act having been passed subsequent to the certain contract aforesaid, and while the same was in full force and effect, and in which act was contained an appropriation of Seven Thousand five hundred Dollars (\$7,500), with authority in the Commissioners of the District of Columbia to purchase and operate a portable asphalt plant in doing such work of repairs to asphalt pavements as, in their judgment, might be economically performed by the use thereof; to which communication and notice, plaintiff, under date October 4, 1912, made reply, advising defendant that the refusal to permit plaintiff to do said repair work during the contract period aforesaid, as well the doing thereof by the District of Columbia itself, would be a breach by the latter of its said contract to that extent and in that regard, for which plaintiff would hold defendant liable for any and all

11 damage and loss which plaintiff might sustain by reason of the breach of contract on the part of said District, as aforesaid, and further therein notifying defendant that any work so performed by it would be at its own risk and peril, and with full notice and knowledge of the rights and claims of plaintiff; and which letter and notice was duly acknowledged by defendant, by letter dated October 5, 1912.

And plaintiff says that, notwithstanding the premises, and continuously from and after said September 19, 1912, defendant wrongfully refused to permit plaintiff to do or perform any of the certain repair work aforesaid, but itself performed the same, up to and including the expiration of the original contract period, June 30, 1913.

And plaintiff further says that, prior to the expiration of the certain original contract period aforesaid, and under date March 28, 1913, defendant caused to be served upon plaintiff written notice that, in the exercise of the right in that behalf reserved to defendant in the certain contract aforesaid, it directed and ordered plaintiff to carry on the work provided for in said contract for an additional term of one (1) year from July 1, 1913, for the prices in said contract stated; whereupon, plaintiff, under date March 31, 1913, acknowledged to defendant the receipt of said notice and order, and advised its acceptance thereof in exact accord with the terms of said original contract, unmodified and unaffected in any way by any act on the part of defendant in violation or breach of said contract, as herein aforesaid, and therein expressly notifying defendant that plaintiff would insist upon its right to do the repair work afore-

12 said under said contract throughout said renewal and extension period, and would insist upon proper payment of damages for any failure to permit plaintiff to do said repair work; and which notice was duly acknowledged by defendant, by letter dated April 1, 1913; and, to secure the faithful performance of said contract during the additional term of one (1) year, as aforesaid, plaintiff, as so thereunto required by defendant, gave its certain other and additional bond, with approved corporate surety, conditioned in the penal sum of One Hundred and Forty-eight Thousand Dollars (\$148,000).

And plaintiff here brings into court and makes profert of the certain notice and order of extension, acceptance thereof by plaintiff, and bond aforesaid; all thereof together with the certain original contract aforesaid, constituting the contract between plaintiff and defendant for said additional term of one year.

And plaintiff says that, notwithstanding the premises, and continuously from July 1, 1913, to the end of said renewal and extension period, namely, June 30, 1914, defendant wrongfully prevented and refused to permit plaintiff to do or perform any of the certain repair work aforesaid, but itself performed the same; all to the further great damage, loss and injury to plaintiff, as hereinafter set forth.

And plaintiff says that, in preparation for the performance of the repair work, so embraced in the certain contract and extension thereof aforesaid, it incurred large expense in securing both by purchase and contract its necessary supply of materials; it expended further large sums of money in preparing and equipping its plant,

13 and in purchasing two (2) specially built steam rollers for use in said repair work, and which latter were rendered of no use to plaintiff when the repair work was taken away from it by defendant, as aforesaid; it was compelled to cancel a charter

for a barge that had been contracted for by it to transport repair materials for use in connection with the repair work covered by said contract and option for extension, and for which cancellation plaintiff was obliged to pay; and plaintiff paid its bond premium on an estimated amount of work which included the contract estimate for repair work; all of which several amounts above referred to were further special loss and damage sustained by plaintiff by reason of defendant's breach of contract, as aforesaid, aggregating the sum of to-wit, Six Thousand Dollars (\$6,000); and, finally, plaintiff lost the gains and profits upon said repair work, during said extension period, July 1, 1913, to June 30, 1914, to which it was entitled, and which would have accrued to and been enjoyed by it but for the breach of contract by defendant, as hereinabove complained. And plaintiff says that the certain repair work aforesaid done and performed by defendant, from July 1, 1913, to June 30, 1914, covering the entire period of the renewal and extension term of said contract, as aforesaid, was 172,128 cubic feet; all thereof being embraced within the terms and provisions of the certain extension period of the contract aforesaid, but of the doing and performing whereof plaintiff was wrongfully prevented and deprived by defendant, as hereinabove stated.

And plaintiff says that although, from the time of making the certain contract aforesaid, as well — throughout the entire original and additional or extended term thereof, as
14 aforesaid, it well and truly performed and fulfilled all things in the said contract contained on its part and behalf to be performed and fulfilled, according to the true intent and meaning of the said contract, except only as wrongfully prevented by defendant, as herein aforesaid; yet, during the entire period embraced within said extension term, namely, July 1, 1913, to June 30, 1914, the said defendant wholly neglected, failed and refused to perform and fulfill all things in said contract, as so extended, as aforesaid, contained on its part and behalf to be performed and fulfilled, and, without lawful right so to do, wrongfully refused to permit plaintiff to perform the certain parts and portions of the contract work, namely, the repairing of asphalt and coal-tar pavements in the District of Columbia, as herein above set forth; by means whereof, the said plaintiff has been put to further expense, has been further greatly injured and damnified, and has lost sundry further great gains and profits which would have arisen and accrued to it during the period last herein aforesaid, but for defendant's breach of said contract, as aforesaid, in the sum of Twenty-five Thousand Dollars (\$25,000).

And plaintiff claims of defendant the said sum of Twenty-five Thousand Dollars (\$25,000), besides costs.

Count 3. For that whereas, for many years past, to-wit, from July 1, 1888, and continuously until the happening of the certain matters hereinafter set forth, on or about September 19, 1912, and thereafter, said defendant, acting under the authority and in pursuance of the requirements of law in that behalf, has caused all
15 of the work of resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia to be done under

public advertisement for bids, and contract awarded thereunder, for periods not exceeding five (5) years; and that during the greater part of the period hereinabove mentioned, the plaintiff was either the contractor with said defendant for the doing of the certain work aforesaid, or actually performed the same for the contractor for said work; and plaintiff says that on, to-wit, April 3, 1911, the defendant issued its certain other public advertisement soliciting sealed proposals or bids for the furnishing of all necessary labor and material and the execution of the work of renewing, resurfacing and repairing asphalt pavements in said District, for the period ending June 30, 1913, with an option of extension in favor of defendant for an additional term not to exceed one (1) year from July 1, 1913; and that plaintiff, acting under the above state of both fact and law, and in response to said public advertisement, and under date April 22, 1911, submitted to defendant its certain other sealed proposal and bid for the doing of the certain work aforesaid, and the same was, thereafter, April 28, 1911, duly accepted by said defendant; and, thereupon, a certain other written contract, under seal, bearing date May, 1911, was duly entered into between said defendant and plaintiff, by the express terms whereof plaintiff, for the period or periods last herein aforesaid, covenanted and agreed to "do such work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the

16 District of Columbia, or his duly authorized assistants, "in strict accordance with the instructions to bidders, specifications, and general stipulations attached to said contract, and made part thereof, at certain prices therein stated, and which agreed prices, so far as here material, and covering the matter of repairs to asphalt pavements, were 43¢ per cubic foot for asphalt binder, and 57¢ per cubic foot for asphalt resurface or topping; and defendant therein covenanted and agreed to pay plaintiff therefor the certain prices aforesaid; that, under paragraph 2 of the certain specifications so attached to and forming a part of said contract, as aforesaid, it was, among other things, stated that the approximate estimates of the amount of work to be done under each fiscal year of the contract, so far as said repair work is concerned, were 125,000 cubic feet of asphalt surface, and 95,000 cubic feet of asphalt binder; and, further, under paragraph 26 of said specifications, it was stated that the repair work to be done by the contractor included "the repairing of all asphalt and coal-tar pavements where defective, due to wear or accident; the repairs of all cuts such as those made for tapping sewers, water pipes, etc.; and generally all patching and miscellaneous work necessary to keep the pavements in good condition for travel during the contract period"; and plaintiff further states that, to secure the faithful performance of all the work covered by the certain contract aforesaid, it gave its certain other bond, with approved corporate surety, conditioned in the penal sum of One Hundred and Forty-eight Thousand Dollars (\$148,000).

And plaintiff here brings into court and makes profert of the certain contract aforesaid, together with the certain advertisement for bids, proposal, acceptance, specifications, and bond aforesaid; all attached to and made part of said contract.

And plaintiff says that, on July 1, 1911, and under and in accordance with the certain contract aforesaid, it entered upon the performance of the certain work hereinabove mentioned, and that, until the period hereinafter named, it fully performed all the needs and requirements of defendant covering the renewing, resurfacing, and repairing of asphalt and coal-tar pavements in said District, as in and by the terms and provisions of the certain contract aforesaid, it was both required and entitled to do; but plaintiff says that while so engaged, and under date September 17, 1912, the defendant caused a certain other written communication to be sent to plaintiff, advising it that, from and after September 19, 1912, and until otherwise ordered, the work of repairs to the asphalt pavements throughout the District of Columbia would be made by the Commissioners of said District with a portable asphalt plant; this under the assumed authority of a certain act of Congress, entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes," approved June 26, 1912 (30 Stat. pt. 1, pp. 139, 150), said act having been passed subsequent to the certain contract aforesaid, and while the same was in full force and effect, and in which act was contained an appropriation of Seven Thousand five hundred Dollars (\$7,500), with authority in the Commissioners of the Dis-

trict of Columbia to purchase and operate a portable asphalt plant in doing such work of repairs to asphalt pavements as, in their judgment, might be economically performed by the use thereof; to which communication and notice, plaintiff, under date October 4, 1912, made reply, advising defendant that the refusal to permit plaintiff to do said repair work during the contract period aforesaid, as well the doing thereof by the District of Columbia itself, would be a breach by the latter of its said contract to that extent and in that regard, for which plaintiff would hold defendant liable for any and all damage and loss which plaintiff might sustain by reason of the breach of contract on the part of said District, as aforesaid, and further therein notifying defendant that any work so performed by it would be at its own risk and peril, and with full notice and knowledge of the rights and claims of plaintiff; and which letter and notice was duly acknowledged by defendant, by letter dated October 5, 1912.

And plaintiff says that, notwithstanding the premises, and continuously from and after said September 19, 1912 defendant wrongfully refused to permit plaintiff to do or perform any of the certain repair work aforesaid, but itself performed the same, up to and including the expiration of the original contract period, June 30, 1913, all to the great damage, loss and injury to plaintiff, as hereinafter set forth.

And plaintiff further says that, prior to the expiration of the certain original contract period aforesaid, and under date March 28, 1913, defendant caused to be served upon plaintiff a certain other written notice that, in the exercise of the right in that behalf reserved to defendant in the certain contract aforesaid, it directed and ordered plaintiff to carry on the work provided for in said contract for an additional term of one (1) year from July 1, 1913, for the prices in said contract stated; whereupon, plaintiff, under date March 31, 1913, acknowledged to defendant the receipt of said notice and order, and advised its acceptance thereof in exact accord with the terms of said original contract, unmodified and unaffected in any way by any act on the part of defendant in violation or breach of said contract, as herein aforesaid, and therein expressly notifying defendant that plaintiff would insist upon its right to do the repair work aforesaid under said contract throughout said renewal and extension period, and would insist upon proper payment of damages for any failure to permit plaintiff to do said repair work; and which notice was duly acknowledged by defendant, by its certain other letter, dated April 1, 1913; and to secure the faithful performance of said contract during the additional term of one (1) year, as aforesaid, plaintiff, as so thereunto required by defendant, gave its certain other and additional bond, with approved corporate surety, conditioned in the penal sum of One Hundred and Forty-eight Thousand Dollars (\$148,000).

And plaintiff here brings into court and makes profert of the certain notice and order of extension, acceptance thereof by plaintiff, and bond aforesaid; all thereof, together with the certain original contract aforesaid, constituting the contract between plaintiff and defendant for said additional term of one (1) year.

And plaintiff says that, notwithstanding the premises, and continuously from July 1, 1913, to the end of said renewal and extension period, namely, June 30, 1914, defendant wrongfully prevented and refused to permit plaintiff to do or perform any of the certain repair work aforesaid, but itself performed the same; all to the further great damage, loss and injury to plaintiff, as hereinafter set forth.

And plaintiff says that, in preparation for the performance of the repair work, so embraced in the certain contract and extension thereof aforesaid, it incurred large expense in securing both by purchase and contract its necessary supply of materials; it expended further large sums of money in preparing and equipping its plant, and in purchasing two (2) specially built steam rollers for use in said repair work, and which latter were rendered of no use to plaintiff when the repair work was taken away from it by defendant, as aforesaid; it was compelled to cancel a charter for a barge that had been contracted for by it to transport repair materials for use in connection with the repair work covered by said contract and option for extension, and for which cancellation plaintiff was obliged to pay; and plaintiff paid its bond premium on an estimated amount of work which included the contract estimate for repair work; all of which several amounts above referred to were further special loss and dam-

age sustained by plaintiff by reason of defendant's breach of contract, as aforesaid, aggregating the sum of, to-wit, Six Thousand Dollars (\$6,000); and, finally, plaintiff lost the gains and profits upon said repair work during the respective periods September 19, 1912, to June 30, 1913, and July 1, 1913, to June 30, 1914, as herein aforesaid, to which it was entitled, and which would have accrued to and been enjoyed by it but for the breach of contract by defendant, as hereinabove complained.

21 And plaintiff says, that the certain repair work aforesaid done and performed by defendant, from September 19, 1912, to July 1, 1913, covering that part of the period and term of the original contract with plaintiff, as aforesaid, was 103,145 cubic feet; and from July 1, 1913, to July 1, 1914, covering the entire period of the renewal and extension term of said contract, as aforesaid, was 172,128 cubic feet, or a total, for the entire said two periods, of 275,273 cubic feet; all thereof being embraced within the terms and provisions of the certain contract and extension thereof aforesaid, but of the doing and performing whereof plaintiff was wrongfully prevented and deprived by defendant, as hereinabove stated.

And plaintiff says that although, from the time of making the certain contract aforesaid, as well — throughout the entire original and additional or extended term thereof, as aforesaid, it well and truly performed and fulfilled all things in the said contract contained on its part and behalf to be performed and fulfilled, according to the true intent and meaning of the said contract, except only as wrongfully prevented by defendant, as herein aforesaid; yet, continuously from and after September 19, 1912, up to and including June 30, 1913, being the end of the original contract period, and continuously from and after July 1, 1913, to June 30, 1914, covering the entire period of the additional or extension term of said contract, the said defendant wholly neglected, failed and refused to perform and fulfill all things in the said contract and extension thereof aforesaid, contained on its part and behalf to be performed and fulfilled. and,

22 without lawful right so to do, wrongfully refused to permit plaintiff to perform the certain parts and portions of the contract work hereinabove set forth, namely, the repairing of asphalt and coal-tar pavements in the District of Columbia, by means whereof, the said plaintiff has been put to further great expense, has been further greatly injured and damnified, and has lost sundry further great gains and profits which would have arisen and accrued to it during the respective periods herein aforesaid but for defendant's breach of said contract, as aforesaid, in the sum of Twenty-five Thousand Dollars (\$25,000).

And plaintiff claims of defendant the said sum of Twenty-five Thousand Dollars, (\$25,000), besides costs.

A. A. HOEHLING, JR.,
S. C. PEELLE,
C. F. R. OGILBY, JR.,
Attorneys for Plaintiff.

Demurrer to the Declaration.

Filed August 11, 1915.

* * * * *

Now comes the defendant, the District of Columbia, by its attorneys and demurs to the declaration herein filed and to each count thereof, for that,

1. No legal cause of action is set out in the said declaration, or any count thereof.

2. That the said contract sued upon, of which profert is made, shows upon its face that it was subject to appropriations to be made by Congress, and the said declaration does not disclose that
23 any appropriations were made for the payments on the said contract which were not made to the plaintiff.

3. That the said contract does not guarantee to the plaintiff any particular amount of work or any specified sums to be paid to the said plaintiff, but under the said contract said plaintiff was to be paid, and was paid, only for the work actually performed.

4. That under and by the said contract the said plaintiff was to be paid, and actually was paid, only on such work as might be ordered from time to time, by the defendant.

5. That under and by the said contract the defendant is not liable for prospective profits lost by the plaintiff.

C. H. SYME,
F. H. STEPHENS,
Attorneys for Defendant.

Supreme Court of the District of Columbia.

Friday, January 26, 1917.

Session resumed pursuant to adjournment, Mr. Chief Justice Covington presiding.

* * * * *

By Justice Gould.

Upon hearing the demurrer of defendant filed herein to the plaintiff's declaration, it is considered that said demurrer be, and it is hereby overruled.

24

Pleas.

Filed June 21, 1919.

* * * * *

Now comes the defendant by its attorneys, and for pleas to the declaration filed herein, and to each count thereof:

1. That it never executed the said contract in the manner and form as alleged in the said declaration.

2. That the plaintiff has not been damaged to the extent claimed in the said declaration because of the fact that a large part of his equipment alleged in said declaration to have been ordered and used for the purpose of carrying out the provisions of said contract, set out in said declaration, were used by the plaintiff in the performance of other work, other than that done by the plaintiff under said contract with the District of Columbia.

C. H. SYME,
F. H. S.,
F. H. STEPHENS,
Attorneys for Defendant.

Joinder in Issue.

Filed June 24, 1919.

* * * * *

The plaintiff hereby joins issue with the defendant upon each of the two (2) pleas filed by it herein.

HOEHLING, PEELLE & OGILBY,
Attorneys for Plaintiff.

25

Motion to Refer Cause to Auditor.

Filed October 25, 1919.

* * * * *

Comes now the plaintiff, The Cranford Paving Company, a corporation, by its attorneys, and moves the Court to refer the issues joined in the above-entitled cause to the Auditor of the Court, with direction to audit and state the accounts and dealings between the parties plaintiff and defendant, in accordance with the provisions of Section 254 of the Code of Laws for the District of Columbia; and, for cause, shows:

1. That the action is one seeking to recover damages from the defendant for breach by the latter of contract entered into with plaintiff for, inter alia, the making of repairs to the asphalt pavements throughout the District of Columbia, covering the respective periods September 19, 1912, to June 30, 1913, and July 1, 1913, to June 30, 1914.

2. The ascertainment of the exact amount of damage sustained by plaintiff; and for which claim is made herein, involves the questions of fact, (a) the aggregate amount, in cubic feet, of the repair work aforesaid covering the respective periods aforesaid: (b) the cost to plaintiff of performing and doing the volume of work, so ascertained, as above; and (c) the amount of profit plaintiff would reasonably have derived from the performance of said work during the periods mentioned.

3. The issues in the case necessarily involve the statement of an

account between the parties, in which amount there are a large number of individual items to be separately considered and determined, the examination, development and determination of which before a jury would be both tedious and protracted, and the audit herein asked is in the interest of saving the time of both Court and counsel in the presentation of this case upon the ultimate and real issue in the case, which, save only for the accounting and audit herein asked, is one of law.

HOEHLING, PEELLE & OGILBY,
Attorneys for Plaintiff.

26

Washington, D. C., October 24th, 1919.

To

Conrad H. Syme and
F. H. Stephens, Esqrs.,
Attorneys for Defendant.

DEAR SIRs:

You will please take notice that motion to refer to the Auditor, of which the above is a true copy, will be presented to the Circuit Court for appropriate action, on Friday next, the 31st instant.

Truly yours,

HOEHLING, PEELLE & OGILBY,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

Friday, October 31st, 1919.

Session resumed pursuant to adjournment, Hon. F. L. Siddons,
Justice presiding.

* * * * *

Upon motion of the plaintiff, and for good cause shown, it is by the Court ordered that the issues joined in this cause be, and the same hereby are, referred to the Auditor of this Court, under the provisions of Section 254 of the Code of Laws for the District of Columbia, who is hereby authorized and directed to audit and state the accounts and dealings between the plaintiff and defendant, and, thereafter to make report thereof to this Court with all convenient speed.

27

Report of the Auditor.

Filed March 27, 1920.

* * * * *

1. This cause was referred to the Auditor under date of October 31, 1919 under the provisions of Section 254 of the Code of Law for the District of Columbia. The directions to the Auditor are embodied in the order of this Court recorded in Volume 67, Law Minutes, page 500; a copy of the directions to the Auditor is attached

hereto. After due notice the cause came on for hearing before the Auditor on Thursday, December 11, 1919. A further hearing was held on Thursday, January 8, 1920. The testimony adduced at said hearings and the exhibits produced thereat are herewith. The following is a statement of the dealings of the parties:

2. By an act of Congress, approved June 11, 1878, (20 Stat. 102, 105-6), it was provided and required that all renewing, resurfacing, and repairing of asphalt pavements in the District of Columbia, the total cost whereof shall exceed \$1,000.00, shall be by contract entered into between the Commissioners of the District of Columbia and the lowest responsible bidder, after public advertisement for proposals.

3. By further act of Congress, approved July 18, 1888, (25 Stat. 319), it was provided that, thereafter, contracts for repairs to concrete pavements might be made for periods not exceeding five (5) years, subject to annual appropriations therefor by Congress.

4. The above was, and at all times thereafter continued to be, the state of the law applicable to the subject-matter above mentioned, until and including the entering into by the defendant herein of the certain contract with plaintiff, dated May 1, 1911, out of which contract the present controversy arose, and thereafter, as hereinafter set forth in this report.

5. The plaintiff, The Cranford Paving Company, was incorporated under the laws of the State of West Virginia, February 4, 1889. Henry L. Cranford, whose name appears in the corporate name mentioned, started the street paving business in the District of Columbia in 1876; in 1881, he formed a partnership with one Filbert, although continuing to carry on the business in his individual name until 1889, when the plaintiff corporation was organized—said corporation, and its said predecessor or predecessors, having been continuously engaged in the street paving business in the District of Columbia from 1876 to this date.

6. Beginning with July 1, 1881, and continuously until July 1, 1893, the above-named Henry L. Cranford performed all of the street repairing and resurfacing work for the District of Columbia, under successive contracts entered into in that behalf; and, beginning July 1, 1893, and ending July 1, 1903, the plaintiff, The Cranford Paving Company, performed all of said work for the District of Columbia, likewise under contracts entered into by and between the said District of Columbia and the plaintiff corporation.

7. It appears that from July 1, 1903, to July 1, 1911, the same class of work was performed, under successive contracts, by the Warner-Quinlan Asphalt Co., of New York, and Brennan Construction Co., of this District.

8. Such was the then existing state of law and knowledge of plaintiff company of the past and then present state of facts and dealings when, after public advertisement for bids in accordance with law, the defendant, under date of May 1, 1911, let a contract (contract No. 4794) to the plaintiff, for the doing by the plaintiff of certain "work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the

District of Columbia, or his duly authorized assistants, for a period from July 1, 1911, to June 30, 1913" (see exhibit No. 6).

9. Under and by virtue of said contract the defendant was to pay the plaintiff—

"For laying standard asphalt surface (for repairs and miscellaneous work, cuts, etc.), the price of fifty-seven cents (\$0.57) per cubic foot;

"For laying asphalt binder (for repairs and miscellaneous work, cuts, etc.), the price of forty-three cents (\$0.43) per cubic foot;"

10. The plaintiff duly gave a bond, as required by said contract, and entered upon the performance of said contract on July 1, 1911, and the plaintiff, for the purpose of performing said contract, expended, approximately, the sum of \$9,200.00 in making changes in its plant and in the purchase of equipment. The plaintiff continued to duly perform said contract in all respects on its part until September 19, 1912, and, after the last mentioned date, was ready, able and willing to fully perform said contract. On said date of September 19, 1912, the defendant breached said contract in respect to "repairs to the asphalt pavements throughout the District," the defendant by letter dated September 17, 1912 (exhibit No. 8), advising the plaintiff that "you are hereby notified that until further ordered,

30 repairs to the asphalt pavements throughout the District will be made by the Commissioners with a portable asphalt plant, under the above law after the nineteenth instant;" referring thereby to a certain act of Congress, approved June 26, 1912, (37 Stat. 139, 150), wherein and whereby an appropriation of \$7,500.00 was made for the purchase by the Commissioners of the District of Columbia of what was therein described as a "portable asphalt plant," and its operation "in doing such work of repairs to asphalt pavements as in their judgment may be economically performed by the use of said plant."

11. The plaintiff formally protested against the action of the defendant in breaching the contract, and the plaintiff, by its letter dated October 4, 1912, advised the defendant that—

"notice is hereby respectfully brought to your attention that the Cranford Paving Company now, and at all times hereafter, when and as the same may be or become necessary, will insist upon proper compensation from the District of Columbia, covering any and all damages to which it may consider itself entitled by reason of the premises aforesaid; and that in so far as the District of Columbia may see fit to itself do and perform any of the work embraced in the certain contract aforesaid, it will do so at its own risk and peril, and with full notice and knowledge of the fact that the Cranford Paving Company does not, in any way, waive, but expressly reserves its right at all times to insist upon proper payment to it by the District, of such damage and loss as may be sustained by said Company, by reason of the breach of contract on the part of the District in the respect aforesaid." (See exhibit No. 9.)

12. In accordance with the terms of the contract dated May 1, 1911, No. 4794, the defendant by a certain order dated March 28, 1913, which order was duly served on the plaintiff on the 29th day of March, 1913, ordered the plaintiff "to carry on the work provided for in said contract for an additional term of one year from the first day of July, 1913, for the prices in said contract stated" (exhibit No. 12), and by letter dated March 31, 1913 (exhibit No. 13), the plaintiff acknowledged the receipt of said order, and advised the defendant that—

"In now acknowledging your order, and in advising you of our acceptance thereof, we have the honor to advise you that the extension of said contract is undertaken and agreed to by us exactly in accordance with the terms of the original contract, unmodified and unaffected in any way by any act on your part in violation or breach of said contract; and we do not hereby waive, but expressly reserve, and will at all times insist upon proper payment to us of damages for the failure to permit us to do the repair work under our said contract; and will equally insist upon our rights in that behalf in connection with the renewal and extension of said contract for the further period of one (1) year as above";

13. By letter dated April 1, 1913, the defendant acknowledged receipt of the aforesaid letter of March 31, 1913, "relative to continuing contract 4794 for one year from July 1, 1913" (Exhibit No. 14). The plaintiff at all times from September 19, 1912, to June 30, 1913, and from July 1, 1913, to June 30, 1914, was ready, able, and willing to perform, in all respects, said contract No. 4794; and during the whole of said periods, from September 19, 1912, to June 30, 1913, and from July 1, 1913, to June 30, 1914, the defendant continued its breach of said contract and would not fulfill said contract No. 4794 in respect to "repairs to the asphalt pavements throughout the District."

14. The Auditor finds and reports that in the act of Congress, approved June 26, 1912 (37 Stat. 139, 150) the sum of \$360,000.00 was appropriated for "Repairs Streets, Avenues, and Alleys," in the District of Columbia; and, in the Report of the Commissioners made to Congress, for the year ended June 30, 1913, the sum of \$278,-230.79 was reported as the amount of expenditures during said year for street work, including repair work, of which amount the sum of \$26,433.58 was reported as the cost of the operation by the District of its portable asphalt plant; and in the act, approved March 4, 1913, (37 Stat. 938, 947-8) the sum of \$365,000.00 was appropriated for "Repairs Streets, Avenues and Alleys," in the District of Columbia; and, in the Report of the Commissioners made to Congress, for the year ended June 30, 1914, the sum of \$237,-708.87 was reported as the amount of expenditures during said year for street work, including repair work, of which amount, the sum of \$56,982.20 was reported as the cost of the operation by the District of its portable asphalt plant.

15. The Auditor further finds from the testimony adduced herein that, as a result of being deprived of the certain parts of its contract work aforesaid, the plaintiff sustained direct pecuniary losses, aside

from loss of profit, aggregating several thousand dollars, in the way of special equipment purchased for said repair work; canceling charter for barge, which became needless when the repair work was taken over by defendant; interest carrying charges on material purchased for repair work; bond premium paid by plaintiff upon estimated amount of repair work, etc. No claim is made herein by plaintiff for recovery in respect of any of the items in this paragraph mentioned, and no allowance therefor is made herein; but the facts are deemed proper to be reported as a part of the transactions and dealings between the parties concerning the subject-matter of the litigation.

16. The evidence before the Auditor shows that, during the period, September 19, 1912, to June 30, 1913, inclusive, the work which plaintiff was entitled to perform, in accordance with, and embraced within the terms and provisions of, its said contract No. 4794, and at the said contract rates therefor, but which work the defendant, under the circumstances above recited, itself performed, amounted to—

55.226% of 101,441.4 cu. ft. top mixture @ 57¢.....	\$31,932.55
44.774% of 101,441.4 cu. ft. binder @ 43¢.....	19,530.33
Total price at contract rates.....	\$51,462.88

17. The evidence before the Auditor further shows that during the period, July 1, 1913, to June 30, 1914, inclusive, the work which plaintiff was entitled to perform, in accordance with, and embraced within the terms and provisions of, its said contract, and at the said contract rates therefor, but which work the defendant, under the circumstances above recited, itself performed, amounted to—

55.226% of 168,288 cu. ft. of top mixture @ 57¢.....	\$52,975.08
44.774% of 168,288 cu. ft. of binder @ 43¢.....	32,400.19
	85,375.27

Resurfacing, (Myrtle St.):

1,500 sq. yds. surface @ 64¢.....	960.00
1,845 cu. ft. binder @ 28¢.....	516.60
Total price at contract rates.....	86,851.87

18. Of the total output of the portable asphalt plant operated by the defendant during the period September 19, 1912, to June 30, 1913, of 103,145.40 cu. ft., and for which recovery is sought herein by plaintiff, the testimony adduced herein discloses that 1,704 cu. ft. thereof represented certain bituminous material, in that quantity, which was a product of a test run of the certain portable asphalt plant aforesaid for the purpose only of determining its daily capacity; and which test was a requirement of the contract for the purchase of the plant, and, accordingly, rather than waste the material, it was spread and rolled on the surface of Kirby Street, (Square 555,) an old macadam surface, under authority of Com-

missioners' order, of October 8, 1912; such procedure being neither a repair nor resurface within the terms of said contract No. 4794, relating to the repair or resurfacing of existing asphalt pavements. (Ex. No. 16.)

19. While the plaintiff, in its declaration herein, claims recovery of and from the defendant based upon a total output of said portable asphalt plant so operated by the defendant, during the period aforesaid, in the quantity of 103,145.40 cu. ft., the Auditor has deducted the certain quantity of 1,704 cu. ft. aforesaid from the total operations and output of said portable asphalt plant during the aforesaid period of September 19, 1912, to June 30, 1913, inclusive; leaving a total output of that plant, for computation herein, during the period just named, of 101,441.4 cu. ft., and which last-named amount is that used for the computation set forth in the foregoing paragraph 16 hereof.

20. Of the total output of the portable asphalt plant operated by the defendant during the period July 1, 1913, to June 30, 1914, of 172,128 cu. ft. upon which last named quantity recovery is sought and claimed by plaintiff in its declaration herein, the testimony herein discloses that 168,288 cu. ft. thereof was used by defendant for minor repairs and repairs to cuts; and that the remaining 3,840 cu. ft. of the said total output for the year above named was represented by 2,256 cu. ft. of old material mixture and 1,584 cu. ft. of bituminous macadam, the same being used by defendant for re-

35 surfacing Myrtle St., N. E., (from North Capitol St. to First St.), the quantities just named being equated to 1,500 sq. yds. top surface ($1\frac{1}{2}$ inches), and 1,845 cu. ft. binder ($1\frac{1}{2}$ inches). While the declaration of plaintiff herein claims compensation for the entire said output of defendant's portable plant of 172,128 cu. ft. for the period in this paragraph named, at the contract rate of 57¢ per cu. ft. for top and 43¢ per cu. ft. for binder, the computation made herein by defendant's engineers, figures the amount of compensation at the rates named on the aggregate quantity of 168,288 cu. ft. supra, and the remaining said 3,840 cu. ft. of work done on Myrtle St. at the lesser contract rate for resurfacing at 64¢ per sq. yd. for surface and 28¢ per cu. ft. for binder. The Auditor accepts that theory, and the respective amounts are so reported in the foregoing paragraph 17 hereof.

21. The evidence before the Auditor shows that during the period from September 19, 1912, to June 30, 1914, the work which the plaintiff was entitled to perform under contract No. 4794, and at the contract rates therefor (the detail whereof is hereinabove set forth) amounted to—

Period of September 19, 1912 to June 30, 1913, inclusive	\$51,462.88
Period of July 1, 1913 to June 30, 1914, inclusive....	86,851.87

Total.....	\$138,314.75
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22. The evidence before the Auditor also shows that the cost of the work to the plaintiff, if it had been permitted to perform the same, would have been as follows:

Period of September 19, 1912 to June 30, 1913, in-	
clusive	\$44,750.33
36 Period of July 1, 1913 to June 30, 1914, in-	
clusive	75,523.36
Total.....	
\$120,273.69	

23. It also appears from the evidence that the plaintiff, if it had been permitted to perform said contract in respect to repairs to the asphalt pavements, would have made a profit of fifteen (15) per cent on the cost of said work.

24. The Auditor, therefore, finds, and so reports, that, in the event it be determined by the Court that defendant is liable to plaintiff, as matter of law, for depriving the latter of certain parts of its contract work, as herein aforesaid, the amount which plaintiff should be entitled to recover therefor of and from the defendant is:

Period, September 19, 1912 to June 30, 1913, inclusive	\$6,712.55
Period, July 1, 1913 to June 30, 1914, inclusive.....	11,328.51
Total.....	
\$18,041.06	

25. The Auditor further reports that the total quantities percentages, computations and amounts, including percentage and amount of loss of anticipated profits on the total quantities and amount of work involved, and during the respective periods herein named, hereinabove found and stated, are the result of computations made by the engineering department of defendant, certified to by its Engineer of Highways, verified by the Auditor herein, and accepted, without question or controversy, by the plaintiff as accurate and correct for the purpose of this reference and audit, thereby relieving the legal questions involved from any controversy as to facts, figures or computations as to exact amounts, either as to method, manner, or ultimate results. (See Exhibit
37 No. 16.)

26. The expense of the reference, covering the Auditor's fee in the sum of \$210.00 and the cost of reporting and transcribing the testimony adduced before the Auditor, in the sum of \$25.00, total \$235.00, has been paid by the plaintiff. It is recommended that the burden of ultimate payment of the costs of the reference abide the result of the litigation in the same manner as other costs.

27. The attention of the Court is especially invited to the stipulation entered into by and between Messrs. Hoehling, Peelle and Ogilby, attorneys for plaintiff, and F. H. Stephens, Esq., attorney for defendant, touching on matters herein reported upon by the Auditor, the said stipulation having been filed with the Clerk of this Court on March 27, 1920.

28. The following is a statement, in debit and credit form, of the account between the parties:

District of Columbia, Plaintiff, to the Cranford Paving Company,
Defendant, Dr.

To loss of Profits during the period from September 19,
1912, to June 30, 1914, growing out of breach of con-
tract No. 4794, dated May 1, 1911, in respect to the
making of repairs to the asphalt pavements in the
District of Columbia..... \$18,041.06

Respectfully submitted,

H. L. DAVIS,
Auditor, Supreme Court, D. C.

Mar. 27, 1920.

38

Stipulation.

Filed March 27, 1920.

* * * * *

In order to obviate the necessity for taking further testimony herein before the Auditor touching the matter below referred to, it is hereby agreed between the parties hereto that, while the certain order of the Commissioners of the District of Columbia, dated March 28, 1913, and served upon The Cranford Paving Company, in terms stated that the former desired the latter to carry on the work provided for in the contract in suit herein for an additional term of one (1) year from July 1, 1913, for the prices named in said contract; this in accordance with the terms and provisions of the contract in that behalf; nevertheless, the said commissioners had no intention, then or thereafter, of permitting said company to do or perform any of the work of making repairs to the asphalt pavements in the District of Columbia; and which latter part of the contract work said Commissioners had taken over, on or about September 17, 1912, and continuously thereafter performed with its own portable asphalt plant.

It is further agreed that said The Cranford Paving Company, while reserving all of its rights under the certain contract above referred to, and protesting that the Commissioners of the District of Columbia had no right to deprive it of any part of the contract work during the period of such extension, as set forth in its certain letter to the said Commissioners, dated March 31, 1913; nevertheless, the said company then knew that the Commissioners
39 did not intend to permit it to do any of said repair work during said extended period.

HOEHLING, PEELLE & OGILBY,
Attorneys for Plaintiff.

F. H. STEPHENS,
Attorney for Defendant.

Washington, D. C., March 18, 1920.

40

Copy.

EXHIBITS.

Proposals for Making Repairs to Asphalt Pavements.

Office of the Commissioners, District of Columbia,

Washington, D. C., April 3, 1911.

Sealed proposals will be received at this office until 2 o'clock P. M., Saturday, April 22, 1911, for making repairs to asphalt pavements for the period ending June 30, 1913.

Blank forms of Proposals, Specifications, and all necessary information may be obtained at the office of the Chief Clerk, Engineer Department, Room No. 427, District Building.

CUNO H. RUDOLPH,
JOHN A. JOHNSTON,
WILLIAM V. JUDSON,
Commissioners, D. C.

Proposal.

Washington, D. C., Apr. 22, 1911.

SIRS:

We hereby propose to furnish all necessary labor and material (except where specifically stated to the contrary herein), and in good, firm, and substantial manner, in strict accordance with the specifications and general stipulations hereto attached, execute such work of renewing, resurfacing, and repairing asphalt pavements in the District of Columbia as may be ordered by the Commissioners of the District of Columbia, under appropriations of Congress made and to be made for the fiscal years ending June 30, 1912, and June 30, 1913, at the following prices:

(Bid marked (a) is for the work using a natural pitch-lake asphalt conforming to the within specifications. Bid marked (b) is for the work using any asphalt that will conform to the within specifications. Bids will be canvassed under both classifications (a) and (b), but award will be made for but one classification. The price for but one class of work of the successful bidder will be accepted by the Commissioners and incorporated in the contract, and the entire work will be executed with that class of material.)

1. Laying standard asphalt pavement (2½ inches asphalt surface, 2 inches binder, before compression) with 6-inch concrete base, at—

(a)		(1.68)	per sq. yd.
(b)		(1.64)	per sq. yd.

2. Laying standard asphalt surface (2½ inches before compression), at—

- (a) (.64) per sq. yd.
 (b) (.61) per sq. yd.
3. Laying standard asphalt surface (resurfacing by heater method),
 at—
 (a) (.66) per cu. ft.
 (b) (.64) per cu. ft.
4. Laying asphalt binder (in connection with resurfacing work),
 at—
 (a) (.28) per cu. ft.
 (b) (.27) per cu. ft.
5. Laying standard asphalt surface (for repairs and miscellaneous
 work, cuts, etc.), at—
 (a) (.57) per cu. ft.
 (b) (.54) per cu. ft.
6. Laying asphalt binder (for repairs and miscellaneous work,
 cuts, etc.), at—
 (a) (.43) per cu. ft.
 (b) (.42) per cu. ft.
- 41 7. Laying standard asphalt surface for repairs, etc., within
 the space required by law to be kept in repair by street-
 railway companies, at—
 (a) (.63) per cu. ft.
 (b) (.60) per cu. ft.
8. Laying asphalt binder fo- repairs, etc., within the space required
 by law to be kept in repair by street-railway companies, at—
 (a) (.48) per cu. ft.
 (b) (.47) per cu. ft.

We further propose to do such additional and extra work as may be ordered at the prices therefor stated in the specifications.

We hereby agree, should contract be awarded us that, if ordered in writing by the Commissioners of the District of Columbia prior to April 1, 1913, we will carry on said work of making repairs to asphalt pavements under said contract, for an additional term, not to exceed one year from July 1, 1913, for the prices hereinbefore stated, subject to annual appropriations to be made by Congress for such work.

We enclose the receipt of the Collector of Taxes of the District of Columbia for five thousand dollars *(\$5,000), which we have de-

*Certified check, payable to the order of the Commissioners of the District of Columbia, or bond of surety company approved by the said Commissioners, will be received in lieu of money deposit.

posited with said Collector to the credit of the Commissioners of the District of Columbia as a guarantee of good faith, and which we hereby forfeit as liquidated damages to the District of Columbia in the event of our failure to enter into a contract for so much of the work as may be awarded us with good and sufficient sureties, within ten (10) days after notice of award.

Very respectfully,

THE CRANFORD PAVING COMPANY,
By J. H. CRANFORD,
Pres. & Treas

Attest:

H. S. HOUGHTON,
Sec'y.

To the Commissioners of the District of Columbia.

(Bidders are instructed to submit prices on each and all of the items of the above proposal; failure to do so will make such bid informal and liable to be rejected as such.

42 L. R. 94927 E. D.

Commissioners of the District of Columbia.

Executive Department.

Washington, April 28, 1911.

Received Apr. 29, 1911.

Referred to

Instructions

.....

Answered by 190-

Ordered:

That the proposal of the Cranford Paving Company, received April 22, 1911, to renew, resurface and repair asphalt pavements in the District of Columbia, for class A work, in strict accordance with the specifications and general stipulations attached thereto and at the prices named in said proposal, is hereby accepted.

Official copy furnished Cranford Paving Co.

By order:

WILLIAM TINDALL,
Secretary, Board of Commissioners, D. C.

Auditor 2.

Aud. State.

Dis. O.

E. D.

Cranford Paving Co.

J-B.

43 I have compared this contract with the accepted proposal and the prices are correct.

E. E. HELM,
Clerk, Contract Board.
C. B. H.

Recommended for approval:

DANIEL E. GARGES,
Chairman, Contract Board.

Approved:

F. H. STEPHENS,
Ass't Corporation Counsel.

No. 4794.

This Contract,

Made and concluded this 1st day of May in the year of our Lord, one thousand nine hundred and eleven, by and between the District of Columbia, a municipal corporation, of the first part, and The Cranford Paving Company, a corporation duly incorporated under the laws of the State of West Virginia, with principal office at Washington, District of Columbia, of the second part.

Witnesseth: That the said party of the second part, for itself and its successors, has agreed and by these presents does agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed, to furnish all necessary labor and material, except as otherwise herein provided, and in a good, firm, and substantial manner, in strict accordance with the instructions to bidders, specifications, and general stipulations hereunto attached, and made a part of this contract, execute the following-described work, to-wit:

44 Do such work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the District of Columbia or his duly authorized assistants, for a period from July 1, 1911, to June 30, 1913, and keep the said work in repair for a period of five (5) years from date of completion, upon the following conditions and for the following prices, namely:

1. The asphalt to be used for said work shall be a natural pitch lake asphalt, conforming to said specifications.

2. The party of the second part shall, if ordered in writing by the Commissioners of the District of Columbia prior to April 1, 1913, carry on the work provided for in this contract for an additional term not to exceed one (1) year from July 1, 1913, for the prices hereinafter stated.

3. That payment for said work shall be subject to annual appropriations made and to be made by Congress.

For laying standard asphalt pavement (two and one-half (2½) inches asphalt surface, two (2) inches binder, before compression)

with six (6) inch concrete base, the price of one dollar and sixty-eight cents (\$1.68) per square yard;

For laying standard asphalt surface (two and one-half (2½) inches before compression), the price of sixty-four cents (\$0.64) per square yard;

For laying standard asphalt surface (resurfacing by heater method), the price of sixty-six cents (\$0.66) per cubic foot;

For laying asphalt binder (in connection with resurfacing work), the price of twenty-eight cents (\$0.28) per cubic foot;

For laying standard asphalt surface (for repairs and miscellaneous work, cuts, etc.), the price of fifty-seven cents (\$0.57) per cubic foot;

For laying asphalt binder (for repairs and miscellaneous work, cuts, etc.), the price of forty-three cents (\$0.43) per cubic foot;

45 For laying standard asphalt surface for repairs, etc., within the space required by law to be kept in repair by street-railway companies, the price of sixty-three cents (\$0.63) per cubic foot;

For laying asphalt binder for repairs, etc., within the space required by law to be kept in repair by street-railway companies, the price of forty-eight cents (\$0.48) per cubic foot.

Also, do such additional and extra work as may be ordered in accordance with the provisions of paragraphs forty-one (41) and forty-two (42) of said specifications, respectively.

And it is further agreed that the party of the second part shall receive payment for the performance of the aforesaid work by checks of the Disbursing Officer of the District of Columbia, in accordance with the provisions of paragraph eleven (11) of said general stipulations.

In witness whereof, the undersigned, Cuno H. Rudolph, John A. Johnston, and William V. Judson, Commissioners of the District of Columbia, appointed under the Act of Congress entitled "An Act providing a permanent form of government for the District of Columbia," approved June 11, 1878, have hereunto set their hands, and caused the seal of the District of Columbia to be hereto affixed; and The Cranford Paving Company, a corporation—by J. H. Cranford, President and Treasurer the party of the second part, has hereto set his hand and caused the seal of said corporation to be hereto affixed the day and year first hereinbefore written.

[Seal of District of Columbia.]

CUNO H. RUDOLPH, [L. S.]

JOHN A. JOHNSTON, [L. S.]

W. V. JUDSON, [L. S.]

Commissioners of the District of Columbia.

THE CRANFORD PAVING CO., [L. S.]

By J. H. CRANFORD,

President & Treasurer.

Attest:

WM. F. MEYERS,

Act'g Secretary.

Changes and interlineations herein were made prior to execution, and signed and sealed in presence of

J. M. RYAN.
R. A. MOULDEN.

Attest:

PERCY CRANFORD,
Acting Secretary.

46

Instructions to Bidders.

1. Signature.—Proposals must be signed by the bidder with the signature in full. When a firm is a bidder, the agent who signs the firm name to the proposal shall state, in addition, the names of the individuals composing the firm. When a corporation is a bidder, the person signing shall state under the laws of what State the corporation was chartered, and the name and title of the officer having authority under the by-laws to sign contracts. The proposal shall also bear the seal of the corporation attested by its secretary. Anyone signing the proposal as agent must file with it legal evidence of his authority so to do.

2. Address.—Post-office address, County, and State, must be given after the signature.

3. Prices.—All prices must be written in words as well as expressed in figures. In case of variation the written prices shall govern.

4. Identification of Proposal.—Proposals will be placed in a sealed envelope, so marked as to indicate its contents without being opened. This envelope will be placed in another addressed to the Commissioners of the District of Columbia, Washington, D. C.; if forwarded otherwise than by mail it must be delivered to the Secretary to the Board of Commissioners.

5. Rejection of Bids.—Reasonable grounds for supposing that any bidder is interested in more than one proposal for the same item will cause the rejection of all proposals in which he is interested. The Commissioners reserve the right to waive any informality in the proposals received, and to reject any or all proposals, or parts of a proposal, and to make the award in such manner as they consider best for the interests of the District of Columbia. Proposals received after the time advertised for opening bids will be returned unopened. No proposal will be accepted from any failing bidder or contractor known as such on the records of the District of Columbia, for twenty years prior to the date of bid.

6. Experience.—Bidders must present satisfactory evidence that they have been regularly engaged in the business of constructing such work as they propose to execute, and in case the lowest responsible bidder has never done any work for the District of Columbia, he must, prior to the award of contract, be able to show work done by him within a distance of one thousand miles from the District of Columbia, and may be required to pay the necessary expenses of an inspection of such work by such representatives of the

District of Columbia, not exceeding two in number, as may be sent by the Engineer to examine it.

7. Capital and Plant.—Bidders must present satisfactory evidence that they are fully prepared with the necessary capital, materials, and machinery to conduct the work to be contracted for to the satisfaction of the Commissioners, and to begin it promptly when ordered.

8. Guaranty Deposit.—Bidders will enclose a receipt of the Collector of Taxes of the District of Columbia for the amount named in the form of proposal as a guaranty of good faith, and as reasonable fixed and liquidated damages, and not as a penalty, to the District of Columbia, and which they agree to forfeit in the event of their failure to enter into contract, with good and sufficient sureties, within ten (10) days after notification of acceptance of their proposal.

9. Return of Deposits.—Bidders' deposits will be returned on application to the Chief Clerk, Engineer Department, to unsuccessful bidders after award of contract is made and to successful bidders after execution of contract.

10. Sundays or Legal Holidays.—No work shall be done on Sunday or legal holidays, except in cases of emergency, and then only with the consent of the Engineer, nor shall any work be done at night unless authorized in writing by the Engineer.

11. Changes.—Changes, alterations, or interlineations must be explained by foot-note in proposal.

12. Withdrawals.—If a bidder wishes to withdraw his proposal, he may do so before the time fixed for the opening, without prejudice to himself, by communicating his purpose in writing to the Secretary to the Board of Commissioners, and, when reached, it shall be handed to him or to his authorized agent, unread.

13. Breach.—No waiver of any breach of the contract shall constitute a waiver of any subsequent breach of any part thereof, nor of the contract.

14. Laws Affecting Public Work.—The attention of bidders is invited to the "Act regulating retent on contracts with the District of Columbia, approved March 31, 1906:"

"That on all contracts made by the District of Columbia for construction work there shall be held a retent of ten per centum of the cost of such construction work as a guaranty fund to keep the work done under such contracts in repair, and that the terms of such contracts shall be strictly and faithfully performed. On contracts for the construction of asphalt, tar, brick, cement, or stone pavements the retent shall be held for a term of five years from the date of the completion of the contract. On contracts for the construction of bridges and sewers the retent shall be held for a term of one year from the date of completion of contract. On contracts for the construction of buildings, and other contracts for construction work, the retent shall be held until the completion of the work. All retents for one year or more shall be deposited with the Treasurer of the United States as now required by law."

Also the following clause of the Act of March 3, 1887:

"That the Treasurer of the United States, as Commissioner of the

sinking fund of the District of Columbia, shall not be compelled hereafter to invest money retained from District contracts hereafter entered into; but may, in his discretion retain said funds without interest, or invest the same in any class of United States or District of Columbia bonds, at the request and at the risk of the contractor, whenever the sum retained on any contract shall reach the sum of one hundred dollars or more; any sum less than one hundred dollars shall be retained without interest as above."

Also to Public Act No. 82, approved February 28, 1899, relative to payment of claims for material and labor furnished for District of Columbia buildings, and to the Public Act relative to the limitation of the hours of daily service of laborers and mechanics upon the public works of the United States and the District of Columbia.

All laws and regulations of the United States and of the District of Columbia, especially in so far as they relate to the protection of life and property, are to be strictly observed.

47 *Specifications for Resurfacing and Repairing Asphalt and Coal-tar Pavements.*

1. Work.—The work to be done under this proposal and contract includes the renewal or resurfacing of such asphalt and coal-tar pavements as may be ordered from time to time by the Engineer Commissioner or his assistants, and the renewal of the surface of cuts made for tapping sewers and pipes, or for other purposes, and generally all patching and miscellaneous work necessary to keep the above-mentioned pavements in good condition for travel, including the repairs of sidewalks and other pavements disturbed in doing the above work or changed to conform to new grades, if so ordered.

2. Amount of Work.—The amount of work is dependent upon the annual appropriation for "Repairs to Streets," which was \$400,000 for the fiscal year ending June 30, 1911, and is \$425,000 for the fiscal year ending June 30, 1912. For the purpose of canvassing bids the following approximate estimate of the amount of work to be done during each fiscal year of this contract will be used (material for street railway repairs not estimated, and will not be considered in the canvas- of bids):

Standard asphalt pavement on 6" concrete base.	70,000 square yards.
Standard asphalt surface (2½" before compression)	35,000 square yards.
Standard asphalt surface, cubic-foot measurement (heater method)	40,000 cubic feet.
Standard asphalt surface, cubic-foot measurement (repairs and miscellaneous work, cuts, etc.)	125,000 cubic feet.
Asphalt binder, cubic-foot measurement, in connection with resurfacing	60,000 cubic feet.
Asphalt binder, cubic-foot measurement, for repairs and miscellaneous work, cuts, etc....	95,000 cubic feet.

3. Bids.—The Contractor will, for the prices bid, do all the work prescribed in these specifications; do all the necessary grading and trimming of the road-bed and all rolling; provide bridges, fences, and other means of maintaining travel on intersecting streets, roads, and railroads, and all private driveways after giving due notice to parties affected thereby; maintain the same in good and safe condition as long as may be necessary, and then remove such temporary expedients and restore such roads to their proper condition; provide watchmen, lights, fences, and other precautionary measures necessary to the protection of persons and property; furnish all materials (except as specified) and all tools and implements, labor and transportation required to lay and put in complete order for use the specified pavement; and do each and all of these to the satisfaction of the Engineer. Upon the completion of the work he will remove any temporary structures erected during the progress of the work, and restore all fixtures, pavements and parkings, both public and private, to satisfactory condition.

4. Old Material.—The amount of old material to be cut and removed each day shall be decided by the Engineer Commissioner or his agents. Should the contractor remove more than ordered, he must replace it with new material without cost to the District. No payment will be made for any coal-tar or asphalt surface removed in making repairs, and the material thus removed will become the property of the contractor, to be disposed of by him. Any coal tar or asphalt surface and binder removed from concrete base in resurfacing work will be paid for at the price named in Paragraph 41 of the specifications, and such material will become the property of the contractor and be disposed of by him unless the Engineer Commissioner should elect to retain title to any of this material, in which event the contractor will for the price named deliver the same to a distance not to exceed two (2) miles from the site of the work. Where the old pavement, base and surface, is removed for the purpose of laying a new pavement the material will be the property of the District and the work will be paid for at the prices named in Paragraph 41 of the specifications. Granite blocks, cobble, old curb, etc., must be removed to the nearest property yard or to such place within the section of the city being repaired as the Engineer Commissioner may direct.

Asphalt Pavements.

All asphalt work will be done in accordance with the following specifications:

5. Grading and Sub-grade.—The area over which the pavement is to be laid must be excavated to the proper depth below the surface of the pavement when completed, any objectionable or unsuitable matter below the bed being removed to such depth as may be directed by the Engineer and the space filled with suitable material thoroughly compacted. The bed, after being trimmed so as to be parallel to the surface of the pavement when completed, will be thoroughly compacted by rolling, with a roller weighing not less than five (5) tons and by heavy ramming at places which cannot be reached by the roller,

dampening the bed before rolling and ramming, if required, to the satisfaction of the Engineer. No extra allowance will be made for trimming or rolling, but the volume of earth, etc., removed will be paid for as grading of its class.

6. Concrete Base.—Upon the bed thus prepared there will be laid a six (6) inch foundation of concrete as directed, made of the following materials by volume:

1 part Portland cement, 3 parts sand, 7 parts gravel.

Broken stone, run of the crusher, may be substituted for part or all of the gravel at the option of the contractor.

7. Cement.—The cement used shall conform to the current specifications for supplying cement of its kind to the Engineer Department of the District of Columbia. No brand of cement will be accepted for use which has not established itself as a high-grade Portland cement and given satisfaction for three or more years in use under climatic or other conditions of exposure of at least equal severity as those of the work proposed. No cement shall be used upon the work until it has been tested in the office of the Engineer Commissioner and accepted by him, the tests to extend over such length of time, not exceeding twenty-eight days, as the Engineer Commissioner may think necessary. The cement while in storage or upon the work, or while being hauled upon the work, shall be properly protected, and no cement shall be used which, in the opinion of the Engineer Commissioner, has been injured by age or exposure. The cement shall be kept by the contractor in store, under proper cover, in the city of Washington, subject to inspection for at least ten days after notifying the Inspector of Asphalt and Cements, before it can be used on the streets, and if deemed advisable by the Engineer Commissioner, twenty-eight days. Should the contractor's work be delayed by his failure to keep himself supplied with the necessary amount of approved cement, the District shall have the right to furnish him with tested cement from the stocks on hand at its warehouse and charge said contractor with the cost of same at the rate of two dollars (\$2.00) per barrel of Portland cement for each and every barrel so furnished, and collect the amount due therefor from any moneys found to be due to said contractor by the District.

48 8. Sand.—The sand used shall be clean, sharp river or pit sand, containing both fine and coarse grains, but free from sewage, mud, clay, mica, paper, leaves, chips, and other foreign matter and not showing when shaken with water and after subsidence more than five (5) per cent by volume, of silt.

9. Broken Stone.—Stone used in concrete must be hard, durable and properly broken to a size small enough to pass through a ring two (2) inches in diameter when the run of the crusher is substituted for gravel. The run of the crusher shall not contain over one (1) per cent of material passing a No. 10 sieve. The stone shall be thoroughly cleansed from all foreign substance, and shall be screened and washed, if so ordered by the Engineer. Sand, detritus, or any material other than hard, angular fragments of stone will be considered foreign substances.

10. Gravel.—Gravel shall be clean, washed gravel, and shall not contain pebbles greater than two (2) inches in their largest dimensions, and shall run from that down to pea size, well graduated.

11. Water.—Water used for mortar and concrete shall be fresh and clean, free from earth, dirt, or sewage, and shall be used in such quantity as the Engineer may direct.

12. Platforms.—Platforms shall be provided upon which all sand, gravel, and broken stone for concrete shall be placed when brought upon the line of the work, and kept there until used.

13. Mixing.—The thorough mixing and incorporation of all materials will be insisted upon. If done by hand-labor the dry cement and sand shall be turned over and mixed with shovels by skilled workmen not less than six (6) times before the water is added; the stone or gravel, after being drenched with water, shall be added to the mixed sand and cement; the drenching shall not be done while the stone or gravel is in the wheelbarrow; the whole mass shall be thoroughly turned over with shovels, not less than four times, and mixed upon a water-tight platform until every particle of stone or gravel is completely enveloped with mortar. The whole operation of mixing and laying each batch shall be performed as expeditiously as possible, by the aid of machinery or a sufficient number of skilled men. If the concrete is mixed in batches requiring one barrel of cement, the platform must not be smaller than 10 feet by 12 feet, nor will a larger amount of concrete than can be made with one barrel of cement be allowed to be mixed in one batch by hand. In mixing by machinery the materials must be so delivered as to insure a uniform product of the specified proportions of all ingredients to the satisfaction of the Engineer.

14. Setting.—Concrete shall not be used after it has begun to show evidence of setting. No concrete which has once set shall be used as material for mixing a new batch.

Each batch of concrete after being mixed shall be spread in place in horizontal layers by means of shovels so as to give the requisite thickness after being tamped, and shall then be thoroughly compacted. Any evidence of lack of compaction will be regarded as sufficient reason for removal and replacement of the base. Hauling over base less than three days old must not be allowed unless planks are laid.

15. Binder.—The binder course shall be composed of clean, broken stone, equal in quality to the stone for the base, and passing an inch and a quarter screen. Eighty-five per cent of this shall pass said screen in its longest dimensions, and of the remaining fifteen per cent no piece shall have a larger dimension than one and one-half ($1\frac{1}{2}$) inch, and the stone, after passing the heating drums, shall not contain less than five nor more than fifteen per cent of material passing a No. 10 screen.

The stone will be heated not higher than 350° Fahrenheit, in suitable appliances. It is then to be thoroughly mixed by machinery with asphalt cement, such as is acceptable for surface cement, penetration 60 to 90, at such temperature and in such proportions that the resulting binder will have life and gloss without an excess of

cement. Should it appear dull from overheating or lack of cement, it will be rejected. While hot it will be hauled upon the work, spread upon the base so that when compacted it will be at least one and one-half inches in thickness, and immediately rammed and rolled until it is cold. Should the resulting course not show a proper bond, it must be immediately removed and replaced by and at the expense of the contractor. Binder and top shall not be taken from the yard to the site of the work when weather conditions are, in the judgment of the Engineer, unsuitable for the work of laying the pavement.

The contractor shall not enter upon a concrete base in order to lay the binder course until it has obtained sufficient strength for such a purpose, and during the period between laying the base and binder he shall properly protect it, and, when ordered by the Engineer, shall sprinkle it in warm weather between the hours of sunset and sunrise as often as may be deemed necessary, and in cold weather cover it with a material suitable for its protection.

16. Asphalt Wearing Surface.—The wearing surface of the pavement shall be composed of:

Asphalt.

Petroleum oil.

Asphalt cement.

Clean, sharp-grained sand.

Fine absorbent mineral dust.

17. Asphalt.—The asphalt shall be refined until homogeneous and free from water and shall not at any time be heated to a temperature high enough to injure it. The refined product shall contain at least 90 per cent of bitumen soluble in carbon bisulphide and 100 parts shall not require more than 30 parts of the flux to produce the asphalt cement described in Paragraph 19.

49 18. Petroleum Oil.—The oil in use in the manufacture of asphalt cement shall be a petroleum from which the lighter oils have been removed by distillation without cracking, until the oil has the following characteristics:

Free from water and foreign matter.

Flash point, not less than 300° Fahrenheit.

Distillate at 400° for 30 hours, less than 10 per cent.

The flash point shall be taken in a New York State Closed Oil Tester.

The distillate shall be made with about 50 grams of oil in a small glass retort, provided with a thermometer and packed entirely in asbestos. The residue in the retort, after distilling, must be fluid at 75° Fahrenheit, and not coarsely crystalline on cooling.

Any other softening agents fulfilling the above tests, and approved by the Engineer Commissioner, may be used in place of petroleum oil.

19. Asphalt Cement.—The asphalt cement must be of refined asphalt, fluxed when necessary with petroleum residuum, asphaltic oil, refined maltha, or other approved flux. The cement must be practically free from water and must be within the range of 40 and 70 penetration when tested at 77° F. on Dow penetration

machine with No. 2 needle, 100 grams, 5 seconds. The degree of penetration to be fixed by the Engineer Commissioner.

Preference will be given to an asphalt cement that is not readily affected by the action of water, provided it is satisfactory in other respects. If an asphalt cement is accepted that is affected by water some provision satisfactory to the Engineer Commissioner must be made to guard against the results of such action, and such work must be included in the price bid. The use of an asphalt under these specifications shall be subject to the approval of the Engineer Commissioner, and if an asphalt has been proposed for use by the contractor and approved by the Engineer Commissioner no change in the asphalt to be used shall be made unless with the approval of the Engineer Commissioner. If an asphalt or flux is submitted for use which has not been successfully used for a period of at least two years for paving under conditions similar to those existing in the District of Columbia, its use may be limited to such extent as may be deemed advisable, or it may be rejected for use entirely in the discretion of the Engineer Commissioner.

The bitumen of the asphalt cement must comply with the following tests:

1. It must be of such consistency that when tested at 32° F. it will not show a hardness below 10 penetration, and when tested at 115° F., it will not be softer than 350 penetration.

2. When a briquette of the pure bitumen, having a minimum cross section of one square centimeter, is tested for ductility at 77° F., the bitumen must stretch to a distance of 15 centimeters before breaking.

3. When the bitumen is heated in an open tin box $\frac{3}{4}$ " deep by $2\frac{1}{2}$ " in diameter at a temperature of 300° F. for eighteen hours in a hot-air oven it must not show a loss by volatilization of over 5 per cent and it must not have been hardened over 50 per cent by this heating.

The asphalt cement must never be heated to a temperature that will injure it.

When the asphalt cement contains over 5 per cent of material that will separate by subsidence while in a molten condition it must be thoroughly agitated before drawing from storage and while in use in the supply kettles so as to insure a uniform cement.

These properties shall be determined by tests made by uniform methods, descriptions of which are on file in the office of the Engineer Commissioner.

20. Sand.—The sand in use shall be free from mud, hard grained and moderately sharp. On sifting it should have at least 15 per cent of material that would be caught on a 40 mesh per inch screen, 25 per cent of material that will pass an 80 mesh to the inch screen, and 10 per cent at least must pass a 100 mesh to the inch screen. If the sand to be used does not contain the desired fine material, mineral dust can be added to make up the deficiency, and in any case at least 5 per cent of such mineral dust shall be used. The amount of fine material may be increased or diminished on streets of light traffic at the discretion of the Engineer Commissioner.

21. Mineral Dust.—This shall be any fine hydraulic cement or

lime stone dust, the whole of which shall pass a 30-mesh screen, and at least 85 per cent pass a 100-mesh screen.

22. Asphalt Paving Mixture.—The materials complying with the above specifications shall be mixed in proportion by weight depending upon their character and the traffic on the street, and upon the character of the asphalt, and will be determined by the Engineer Commissioner, but the percentage of bitumen in any mixture soluble in carbon bisulphide shall not exceed the limits, 9 to 13 per cent. If the proportions of the mixture are varied in any manner from those specified the mixture will be condemned; its use will not be permitted; and, if already placed on the streets, it must be removed and replaced by proper materials at the expense of the Contractor.

The sand, or the mixture of sand and stone dust, and the asphaltic cement, will be heated separately to about 300 degrees Fahrenheit. The dust, if limestone, will be mixed while cold with the hot sand in the required proportions and then mixed with the asphaltic cement at the required temperature, and in the proper proportion in a suitable apparatus, so as to effect a thoroughly homogeneous mixture. Sand boxes and asphalt gauges will be weighed in the presence of inspectors as often as may be desired.

Samples of all material entering into the composition of the pavement shall be supplied to the Inspector of Asphalt and Cements when required, in suitable tin boxes and cans; he shall have access to all branches of the works at any time, and shall have the right to obtain samples of all materials from the source of supply.

The pavement mixture prepared in a manner thus indicated will be brought to the ground in carts or wagons at a temperature of not less than 250° or more than 350° Fahrenheit, the contractor must provide canvas covers for use in transit. It will then be shoveled into place and thoroughly spread to a thickness of at least two and one-half ($2\frac{1}{2}$) inches by means of hot iron rakes, in such manner as to give uniform and regular grade, so that, after having received its ultimate compression, it will have a net thickness of at least one and one-half ($1\frac{1}{2}$) inches. This depth will be constantly tested by means of gauges furnished by the Engineer Commissioner. The surface will then be compressed by hand or steam rollers, after which a small amount of hydraulic cement will be swept over it, and it will then be thoroughly compressed by a steam-roller weighing not less than 175 pounds to the inch run, the rolling being continued for not less than five hours for every 1,000 yards of surface. The street to be barricaded until the surface is cool. Barricades to remain for such length of time as deemed necessary by the Engineer Commissioner.

23. Asphaltic Base.—Asphaltic base will be composed of clean broken stone, free from spalls, that will pass through a two-inch ring, well rammed, and rolled with a steam-roller weighing not less than five tons. The rolling will be continued until the stone ceases to creep before the roller, and until it is evident that the final compression has been reached. It will then be thoroughly coated with asphaltic paving cement of approved quality, as directed.

50 Resurfacing Over Asphalt and Coal-tar Pavements.

24. The above specifications shall also apply, as far as practicable, to all work of resurfacing. Where the binder coat cannot be made to uniform thickness, it will be paid for by the cubic foot. The Engineer Commissioner will decide which method of payment will be adopted in each case.

Resurfacing by the Heater Method.

25. The Engineer Commissioner may order certain streets resurfaced by what is known as the Lutz Asphalt Heater Method, or a similar device satisfactory to the Engineer Commissioner, as follows:

The old surface of the street shall be heated and softened by means of this heater to the satisfaction of the Engineer Commissioner or his authorized agent, and so much of the old asphalt topping so softened shall be removed as may be directed. Immediately upon the surface exposed by the removal of the aforesaid old top there shall be deposited new asphaltic-top material and immediately the same shall be spread by means of hot shovels and rakes to such an amount and of such thickness as will not be less than one and one-half ($1\frac{1}{2}$) inches before compression, as may be directed by the District Inspector assigned to the work, the intention being to cover the new surface while still hot with hot new material. This new material so spread shall, without delay, be rolled with hand or steam rollers and finally finished by means of a steam roller of not less than five (5) tons weight, to a firm condition as to compression, and to a regular section in a manner entirely similar to that of new construction. It is the intent of this specification that new work shall be joined to old in all cases with a hot joint, and the contractor is expected to make every reasonable effort to secure this result. Successive heatings shall be made when necessary, as above described, until the entire street, or such portions thereof as indicated, has been covered. This class of resurfacing will not be considered new work, and therefore no retent will be held on the amount paid for this class of work. The same will be paid for by the cubic feet of material furnished, and the price bid on material for this class of work will include all incidental work in connection therewith, such as cutting out old material where necessary, and removing same, also removing old heated material, cleaning up, etc., as in the case of ordinary repairs. In the event that asphaltic binder is required in connection with this work it will be paid for by the cubic foot at the price named in Item 4 of the contract prices herein for binder furnished in connection with resurfacing work.

Ordinary Repairs.

26. The work to be done under this head includes the repairing of all asphalt and coal-tar pavements where defective, due to wear or accident; the repairs of all cuts such as those made for tapping sewers, water pipes, etc.; and generally all patching and miscellaneous work

necessary to keep the pavements in good condition for travel during the contract period. The pavement must be repaired with materials as described above.

27. The repairs shall be made at such times and places, and in such manner as may be directed, and when deemed necessary on certain streets, between the hours of 8 p. m. and 8 a. m. All old material shall be cut out and removed at the contractor's expense, and in the case of undercuts any overhanging portion shall be removed.

28. Except in special cases the base of the pavement over any cuts will be laid by the District, and the surface only by the contractor. The Engineer Commissioner may, however, call upon the contractor to lay the base wherever he may deem it advisable.

29. The holes cut out shall be cleaned and the edges painted with hot paving cement, of such quality as may be acceptable to the Engineer Commissioner.

30. Barricades of a suitable form to prevent traffic over recently-laid work shall be provided and kept in place until the surface has hardened sufficiently to withstand pressure. These barricades and their use must be subject to the approval of the Engineer Commissioner.

31. Work in repairing over plumber, electric light, and similar cuts will be done immediately on receipt of written order from the Engineer Commissioner.

32. Any work of repairs to pavement for which street railway companies are responsible, and which may be ordered under this contract by the proper authority, shall conform to these specifications, and be paid for at the prices named in Items 7 and 8 of the contract prices herein. In case any railway company shall fail or refuse to pay the sum due from said company in respect of work done by or under the orders of the proper officials of the District of Columbia, certificate of indebtedness against said railway company will be issued to the contractor for all work done and all materials furnished by him for the space which must be paved and kept in repair at the expense of said company in accordance with existing laws.

33. Measurement.—Asphaltic top and asphaltic binder specified herein to be paid for by the cubic foot shall be measured on the basis of the box or measure used for measuring at the plant; the sand, in the case of top mixture; and the stone, in the case of binder mixture. In the case of asphaltic top mixture the actual net contents of the box as filled with sand will determine the amount of resultant top mixture to be paid for, and in the case of binder stone ninety-two (92) per cent of the actual net contents of the box as filled with binder stone will determine the amount of resultant binder to be paid for, and payments on these bases will be made. This rule of measurement shall also apply to work done under the heater method.

Additional Work.

34. The following specifications will cover incidental work which may be required of the contractor in connection with the work of renewal, resurfacing and repairs:

necessary to keep the pavements in good condition for travel during the contract period. The pavement must be repaired with materials as described above.

27. The repairs shall be made at such times and places, and in such manner as may be directed, and when deemed necessary on certain streets, between the hours of 8 p. m. and 8 a. m. All old material shall be cut out and removed at the contractor's expense, and in the case of undercuts any overhanging portion shall be removed.

28. Except in special cases the base of the pavement over any cuts will be laid by the District, and the surface only by the contractor. The Engineer Commissioner may, however, call upon the contractor to lay the base wherever he may deem it advisable.

29. The holes cut out shall be cleaned and the edges painted with hot paving cement, of such quality as may be acceptable to the Engineer Commissioner.

30. Barricades of a suitable form to prevent traffic over recently-laid work shall be provided and kept in place until the surface has hardened sufficiently to withstand pressure. These barricades and their use must be subject to the approval of the Engineer Commissioner.

31. Work in repairing over plumber, electric light, and similar cuts will be done immediately on receipt of written order from the Engineer Commissioner.

32. Any work of repairs to pavement for which street railway companies are responsible, and which may be ordered under this contract by the proper authority, shall conform to these specifications, and be paid for at the prices named in Items 7 and 8 of the contract prices herein. In case any railway company shall fail or refuse to pay the sum due from said company in respect of work done by or under the orders of the proper officials of the District of Columbia, certificate of indebtedness against said railway company will be issued to the contractor for all work done and all materials furnished by him for the space which must be paved and kept in repair at the expense of said company in accordance with existing laws.

33. Measurement.—Asphaltic top and asphaltic binder specified herein to be paid for by the cubic foot shall be measured on the basis of the box or measure used for measuring at the plant; the sand, in the case of top mixture; and the stone, in the case of binder mixture. In the case of asphaltic top mixture the actual net contents of the box as filled with sand will determine the amount of resultant top mixture to be paid for, and in the case of binder stone ninety-two (92) per cent of the actual net contents of the box as filled with binder stone will determine the amount of resultant binder to be paid for, and payments on these bases will be made. This rule of measurement shall also apply to work done under the heater method.

Additional Work.

34. The following specifications will cover incidental work which may be required of the contractor in connection with the work of renewal, resurfacing and repairs:

35. Laying Vitrified Block.—Vitrified-block gutters will ordinarily be eighteen (18) inches wide, laid on a concrete base six (6) inches in depth, of the same material and proportions and laid in the same manner as prescribed in these specifications for the concrete base under asphalt pavements.

51 As soon as practicable after the concrete base has been laid, a dry mixture, composed of four (4) parts of the sand specified in Paragraph 8, and one (1) part of Portland cement, thoroughly mixed, will be spread thereon, as a bed for the paving blocks, to the depth of not less than one-half inch, and regulated so as to be exactly parallel to the finished grade of the gutter.

On the bed thus prepared for them the blocks will be set on edge, with the longest dimensions at right angles to the curb, or as directed by the Engineer.

The longitudinal joints of each course of blocks laid must be broken by a lap of not less than four (4) inches.

The blocks will then be carefully rammed by placing a plank over several courses and ramming the plank with a heavy hammer. The ramming will be continued until the blocks reach a firm, unyielding bed and present a uniform surface, with proper grade. Any lack of uniformity in the surface or defect in the grade must be corrected by taking up and relaying the blocks.

After proper ramming the entire gutter will be thoroughly grouted with a thin, easily flowing grout, of neat Portland cement.

A similar construction of block to that described for the gutters may be used adjacent to railroad tracks; the base will in that case extend to the bottom of the cross-ties, or at least six inches thick.

The blocks will be furnished the contractor at the District property yards, and must be hauled to the work at his expense.

36. Setting 6" x 20" Granite and Bluestone Curb.—This curb will be set in the following manner. A trench parallel to the curb line, having a depth of twenty-four (24) inches below the top of the curb, when set, and twenty (20) inches wide, will be excavated to receive the curb and its gravel bed; the dimensions of the trench, in width, will be fourteen (14) inches from the curb line toward the building line of the street, and six (6) inches from said curb line toward the center line of the street. In the trench thus prepared the curb will be set, and brought to line and grade, with plumb face. Spalls, of stone, hard burned brick or other acceptable substance, prepared for the purpose, will be used to adjust the curb to grade, and these spalls will be so placed and adjusted as to support the curbing permanently, and afford a firm and stable support for it, without the use of small chips and fragments, used as "shimming" pieces, to wedge the stone in place. After the curb has been properly placed, and adjusted to line and grade, the trench will be filled with gravel of approved quality, to within eight (8) inches of the top of the curb, the filling to be done in layers of not more than three (3) inches in depth, and thoroughly compacted by suitable ramming. Close contact joints and even surfaces must be made, and the lines and grades furnished strictly followed.

37. Setting 8" x 8" Granite Curb.—This curb will be set in the

following manner. A trench parallel to the curb line, having a depth of fifteen (15) inches below the top of the curb when set, and eighteen (18) inches wide, will be excavated to receive the concrete and the curb. The dimensions of the trench in width will be fourteen (14) inches from the curb line toward the building and four (4) inches from the curb line toward the center line of the street. In the trench thus prepared a bed of concrete, composed of one (1) part of Portland cement, four (4) parts of clean concrete sand, and ten (10) parts of screened pebbles, will be laid, filling the trench to a depth of five (5) inches, the material to be mixed and laid under the same conditions as prescribed for laying cement concrete base for sheet asphalt pavements. On the base prepared and laid as above, the curb will be placed before the concrete has set, and adjusted to line and grade by setting it to a firm, unyielding bearing in a bed of freshly made concrete, by the use of heavy wooden mauls. The face of the curb must be plumb and true to line, and the top of it carefully set to grade with close and even contact joints. After the curb has been set to line and grade, the trench on the footwalk side will be immediately filled with concrete to within five (5) inches of the top of the curb, which will be thoroughly rammed and compacted, after which it will immediately be covered with earth to prevent injury to it through too rapid evaporation, etc. In case vitrified-block gutters are to be laid in front of the curb, any portion of the concrete base of the curb that would interfere with the laying of such gutters must be removed immediately after the curb is set.

38. Resetting 6" x 20" Granite and Bluestone Curb.—The work to be done under this classification is identical with that specified for setting this class of curb, except no hauling of the curb is required other than that incidental to the necessary disposition of it upon the line of the work. Under this classification also, the curb may be adjusted to line and grade without removing it from its trench, if so ordered by the Engineer.

39. Resetting 8" x 8" Granite Curb.—The work to be done under this classification is identical with that specified for setting this class of curb, except that no hauling of the curb is required other than that incidental to the necessary disposition of it upon the line of the work, and no new concrete is required other than that sufficient to imbed the stone and back and adjust it to line and grade.

40. General Instructions.—All curb will be furnished to the contractor at the District property yard, and will be hauled by him to the site of the work; any curbing unaccounted for, or improperly disposed of, or damaged, or broken, through careless or unskilled handling, will be charged against him, and the value of the loss to the district will be deducted from any amount due the contractor for work done, as determined by the Engineer.

All expenses connected with or incidental to the work of setting or resetting curb, as described above, including the hauling of the curbing, preparing the curb trenches, and the necessary grading connected therewith, furnishing gravel and spalls, furnishing and placing concrete, and all other material and labor necessary to execute the work in accordance with the specifications therefor, are included

in the fixed price for the respective items as hereinafter stated. The cost of dressing, jointing, or cutting the curb will be paid for additionally, but no other claim for additional compensation will be entertained.

Should the adjoining brick footwalks be disturbed in order to set or reset the curb, the portion so disturbed shall be repaved, if required by the Engineer, without cost to the District.

41. Additional Work.—Contractors must do such additional work incident to construction of new pavements as may be ordered on each street by the Engineer Commissioner. All such work shall be in accordance with current District specifications. Prices paid for this work will be as stated below:

1. Removing old curb, including haul not to exceed two (2) miles.....eight cents per linear foot.
2. Hauling same beyond distance of two (2) miles.....one cent per linear foot per mile.
3. Hauling from District property yard and setting 6" x 20" curb.....twenty-five cents per linear foot.
4. Resetting 6" x 20" and bluestone curb.....twenty-five cents per linear foot.
5. Hauling from District property yard and setting 8" x 8" curb.....thirty-five cents per linear foot.
6. Resetting 8" x 8" curb on new concrete base.....thirty-one cents per linear foot.
7. Resetting 8" x 8" curb on old concrete base.....fifteen cents per linear foot.
8. Dressing, jointing and cutting curb, etc. (stonecutters' time) including setting-up labor.....sixty-five cents per hour.
9. Removing old rubble, cobble, flagging stone and brick, asphalt block, vitrified block or brick, etc., including haul not to exceed two (2) miles.....fifteen cents per square yard.
10. Hauling same beyond distance of two (2) miles.....one cent per square yard per quarter mile or fraction thereof.
11. Removing old granite block, including haul not to exceed two miles, and removal of old paving bed and cleaning concrete base where same exists.....twenty-five cents per square yard.
12. Hauling same beyond distance of two (2) miles.....one cent per square yard per quarter mile or fraction thereof.
13. Removing old coal-tar or asphalt surface and binder from concrete base in connection with resurfacing work including haul.....twelve cents per square yard.
14. Grading and hauling earth, not to exceed 1,000 feet.....fifty-five cents per cubic yard.
15. Grading and hauling macadam not to exceed 1,000 feet.....fifty-five cents per cubic yard.
16. Removing old cold-tar and bituminous pavement or base of the class laid since 1880 and hauling not to exceed 1,000 feet.....one dollar per cubic yard.

17. Removing old coal-tar and bituminous pavement or base of the class laid prior to 1880 and hauling same not to exceed 1,000 feet.....one dollar and eighty-five cents per cubic yard.
18. Removing old concrete base and hauling not to exceed 1,000 feet.....one dollar and fifty cents per cubic yard.
19. Hauling excavated material, per 100 feet, over first 1,000 feet.....one cent per cubic yard.
20. Laying new or old vitrified brick or block on new 6-inch concrete base....one dollar and thirty cents per square yard.
21. Laying or relaying vitrified brick or block on old concrete base.....sixty cents per square yard.
22. Laying and relaying asphalt block and vitrified brick or block on gravel base.....forty cents per square yard.
23. Cleaning old vitrified brick or block for relaying.....twenty-five cents per square yard.
24. Laying and relaying granite block.....seventy-five cents per square yard.
25. Relaying cobble and rubble.....thirty cents per square yard.
26. Repairing cement walks.....one dollar and fifty cents per square yard.
27. Repairing brick walks.....twenty-five cents per square yard.
28. Laying asphaltic or broken stone base in place.....three dollars per cubic yard.
29. Laying Portland cement concrete base in place.....five dollars per cubic yard.
30. Adjusting man-hole tops and basin-covers to grade.....one dollar and fifty cents each.
31. Adjusting water-valve casings to grade.....three dollars each.
32. Adjusting electric-light or telephone man-hole tops to grade, as follows:
 - a. Size, 14 x 18 inches.....one dollar each.
 - b. Size, 36 x 36 inches.....one dollar and fifty cents each.
 - c. Size, 6 x 6 feet.....four dollars each.

53 42. Extra Work.—The Contractor must be prepared to do any extra work that may be ordered in writing by the Engineer, and for this he will be paid at current rates for work of a similar character, or, if the extra work should be of a class for which no rate is fixed by current contracts, the actual reasonable cost to the Contractor, as determined by the Engineer, plus 15 per cent of said cost.

The contractor shall have no claim for compensation for extra work unless same is ordered in writing by the Engineer. All additional and extra work shall conform to current District of Columbia specifications therefor.

43. Guarantee.—All work under this contract will be guaranteed and kept in repair by the contractor without cost to the District for a period of five years from date of its acceptance by the Commissioners. This date shall be the same as that of the completion of the work as indicated on the final voucher for each street. Ten percentum of the cost of this work will be retained and disposed of as provided for by law. No retent will be held on ordinary repairs (minor repairs).

It is further expressly understood and agreed that if any of the pavements laid should, for any reason whatsoever, within the period of five years, prove inferior to the best laid in the District prior to July 1, 1904, then the contractor shall, on demand of the Commissioners, remove such defective pavements and relay them with new material of approved quality. The Engineer Commissioner shall decide the question of inferiority.

On expiration of guarantee for maintenance, the work is to be inspected, and all imperfections must be corrected where and to such extent as the Engineer shall direct, upon which the Engineer will accept the same in writing, and until such acceptance the guarantee shall be in force. Repairs that may become necessary during the guarantee period will be made by the contractor when ordered by the Engineer Commissioner.

44. Retain Fund.—The retain fund shall be subject to the control of the Commissioners of the District of Columbia for the purpose of maintaining the work in repair and making good any defects discovered during the period specified. In the event of the contractor failing to make such necessary repairs after notice to do so the Commissioners may cause such work to be done and deduct the cost of the same from the retain fund, and, in their discretion, may require of the contractor and his sureties that any portion of the said retain fund which may have been expended for the maintenance of the work shall be made good by further deposit.

45. Site of Work.—The bidder is expected to examine the site of work before bidding, as no allowance will be made for any unusual difficulties which may arise, either affecting the original construction or maintenance of the finished work.

46. Cuts.—Contractors shall be responsible for any work done upon any street over plumbers' cuts or other work done by the permission of the Commissioners before the work is begun.

47. The Commissioners reserve the right to modify these specifications as may from time to time seem desirable. The amount of compensation, if any, due the Contractor for said modifications will be determined by the Engineer Commissioner on the same basis as in the case of extra work.

These stipulations are a part of the specifications.

1. Bond.—Good and sufficient bond in the penal sum equal to at least twenty-five (25%) per cent. of the estimated amount of the contract, with sureties or a surety company satisfactory to the Com-

missioners, will be required from all Contractors, guaranteeing that their contract will be faithfully performed; that the Contractor or Contractors will be responsible for all claims for damages to persons, property or premises arising out of his or their operations prior to the acceptance of the finished work, and that he or they will promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in the contract. In the event that the sureties or surety company become unsatisfactory to the said Commissioners they may in their discretion require from the Contractor an additional or new bond in the same or lesser penal sum with sureties or a surety company satisfactory to them and to be conditioned as above required. Upon the failure to furnish such additional or new bond within thirty (30) days after written notice so to do, all payments under this contract will be withheld until such additional or new bond is furnished.

2. Transfers.—No contract or any interest therein shall be transferred by the parties to whom the award is made; such transfers will be null and void, and will cause the contract to be annulled and the work to be given to other parties under the conditions mentioned herein.

3. Patents.—The Contractor will be required to hold the District of Columbia harmless against all claims for the use of any patented article, process, or appliance in connection with the contract herein contemplated.

4. Contractor's Risk.—All loss or damage due to negligence or arising out of the nature of the work to be done, or from any unforeseen or unusual obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements will be sustained by the Contractor.

5. Employees.—The Contractor shall employ capable superintendents or foremen to represent him on the work, and they shall receive and obey orders from the Engineer. He shall so conduct his operations as to interfere with the work of other District Contractors as little as possible. The foreman, mechanics and others employed by the Contractor shall be skilled in the several parts which are given them to do.

An employee or agent of the Contractor who shall use profane or abusive language to the Inspector, or otherwise impede or embarrass him in the performance of his duty, or who, in the opinion of the Engineer, is careless or incompetent, or obstructs the progress of the work, or disobeys or evades the instructions given by the Engineer, shall be immediately discharged and not again employed without the consent of the Engineer.

6. Weather.—The Contractor shall suspend all work under the contract when notified by the Engineer that the weather is unsuitable for carrying it on.

If work is allowed during cold or freezing weather, the Contractor shall take such additional precautions as the Engineer shall require, without additional expense, and under no circumstances shall materials be used which have been injured by the weather.

7. Inspection.—Inspectors may be appointed who shall have ac-

cess to all parts of the work at all times and whose duty it shall be to point out to the Contractors any neglect or disregard of the specifications of contract; but the right of final rejection of the work will not be waived at any time. Upon all technical questions concerning the execution of the work, in accordance with the specifications and measurements thereof, the decision of the Engineer shall be final. Ordinarily one Inspector will be employed by the District of Columbia for each section of the work under contract; but if, on account of any apparent disregard of the specifications, additional Inspectors shall be required, they will be employed by the District of Columbia, at the rate not to exceed \$6.00 per diem each, and the cost of same will be charged to the Contractor.

8. **Condemned Work.**—All materials furnished and work done not in accordance with these specifications shall be removed within twenty-four (24) hours after written notice from the Engineer by and at the expense of the Contractor, or in case of failure to do so, it shall be removed by the District of Columbia and the cost thereof charged to the Contractor and deducted from the amount due or which may become due him. None but the best material of the several descriptions shall be used.

9. **District Material.**—No materials furnished by the District shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The Contractor will be held responsible for all materials delivered to him upon requisition, and shall be charged for all materials delivered upon said requisition. Should the amount of materials actually delivered and not properly accounted for exceed the amount used upon the work, the cost to the District of the difference must be made good by the Contractor, and will be deducted from any moneys which may be due him.

Any material that is property of the District that is not accounted for by the Contractor to the satisfaction of the Engineer, will be charged against the Contractor at the contract price for similar material.

10. **Failure.**—If the Contractor shall delay or fail to commence with the delivery of the material or the performance of the work as specified herein, or shall, in the judgment of the Commissioners of the District of Columbia, fail to prosecute faithfully and diligently the work in accordance with the specifications and requirements of this contract, then, in either case, the said Commissioners shall have the power to annul this contract by giving notice in writing to that effect to the Contractor and upon the giving of such notice all payments to the Contractor under this contract shall cease, and all money or reserved percentage due or to become due thereunder, shall be retained by the said Commissioners until the final completion and acceptance of the work herein stipulated to be done; and the said Commissioners shall have the right to recover from the Contractor whatever sums may be expended by the District of Columbia in completing the said contract in excess of the price herein stipulated to be paid the Contractor for completing the same, and also all cost of inspection and superintendence, including all necessary traveling

expenses connected therewith, incurred by the said District of Columbia in excess of those payable by the said District of
55 Columbia during the period herein allowed for the completion of the contract by the Contractor, and the said Commissioners may deduct all the above-mentioned sums out of or from the money or reserved percentage retained as aforesaid; and upon the giving of the said notice the said Commissioners shall be authorized to proceed to secure the performance of the work or delivery of the materials, by contract or otherwise, in accordance with law.

11. Payment.—Payments will be made monthly, *provided the progress of the work is satisfactory*, less ten (10) per centum of each estimate, to be withheld until final payment; but ten per centum of the cost of the work will be retained and invested as hereinbefore provided.

12. Conveniences.—The Contractor shall provide, for use of the District inspectors stationed at paving plant, suitable office and testing room with such plain furniture as may be necessary for the proper transaction of their business as agents for the District. They shall also furnish, when needed for use of laborers on line of work, necessary toilet conveniences secluded from public observation.

13. Cleaning Up.—On the completion of work it shall be thoroughly cleaned before it will be accepted.

14. Lines.—All necessary lines and levels will be given by the Engineer by means of suitable marks, and in establishing them the Contractor shall provide such materials and assistance as may be required by the Engineer. All marks given are to be carefully preserved and if destroyed through carelessness the cost of replacing them shall be charged against the Contractor at a fixed price of two (\$2.00) dollars for each point, to be deducted from any money found due at final settlement.

15. All loss or damage due to negligence or arising out of the nature of the work to be done, or from any unforeseen or unusual obstructions or difficulties which may be encountered in the prosecution of the same or from the action of the elements, will be sustained by the Contractors.

16. Interpretation.—Any doubt as to the meaning of these specifications will be explained by the Engineer, who shall have the right to correct any errors or omissions in them when such correction is necessary for the proper fulfillment of their intention. Whenever the word "Commissioners" is used in these specifications, it is understood to designate the Commissioners of the District of Columbia. Whenever the word "Engineer" is used, it is understood to designate the Engineer Commissioner of the District of Columbia, or in his absence, his duly appointed assistants, assistant engineers, and inspectors representing him, limited by the special duties intrusted to them.

56 Know All Men By These Presents:

That We, The Cranford Paving Company, a corporation duly incorporated under the laws of the State of West Virginia, with principal office at Washington, District of Columbia as principal and

American Bonding Company of Baltimore, as surety are held and firmly bound unto the United States of America in the sum of one hundred and forty-eight thousand dollars (\$148,000) lawful money of the United States of America, to be paid to the said United States, for which payment well and truly to be made, we and each of us do bind ourselves, and each of our heirs, executors and administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 1st day of May A. D., one thousand nine hundred and eleven.

Whereas, The above bounden The Cranford Paving Company by an instrument in writing under its hand and seal bearing even date with these presents has contracted with the District of Columbia to furnish all necessary labor and materials, except as therein otherwise provided, and in a good, firm, and substantial manner, in strict accordance with the terms, conditions, and provisions of the foregoing contract, execute the work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the District of Columbia or his duly authorized assistants, for a period from July 1, 1911, to June 30, 1913, and keeping said work in repair for a period of five (5) years from date of completion, as more fully set forth in the foregoing contract, and on the conditions and for the consideration in the foregoing contract, mentioned and contained, or referred to therein:

57 Now, Therefore, The conditions of the foregoing obligation are such that if the said The Cranford Paving Company shall strictly and faithfully perform, to the satisfaction and acceptance of the Commissioners of the District of Columbia, the work to be done by it in accordance with the stipulations of said contract, and shall save harmless from and indemnify the District of Columbia from any and all claims, delays, suits, costs, charges, damages, counsel fees, judgments, and decrees to which said District may be subjected on account of any infringement of letters patent or copyright by it at any time, or on account of any accident to persons, property or premises, after the commencement of the work, and prior to its completion and acceptance, and pay the same, and will promptly make payments to all persons supplying it with labor and material in the prosecution of the work provided for in said contract, and will in every respect fully comply with the provisions and requirements of said contract, and keep the work done by it under its said contract in repair for the term of five (5) years from the completion of its said contract, then this obligation to be void; otherwise to remain in full force and virtue.

THE CRANFORD PAVING CO., [L. s.]
By J. H. CRANFORD,
President & Treasurer.

Attest:

PERCY CRANFORD,
*Acting Secretary.*AMERICAN BONDING COMPANY OF
BALTIMORE, [L. S.]
By THOS. J. DE LASHMUTT,
Attorney-in-fact.

May 3-1911.

File No. 77977. W. W. H.

Approved as to sufficiency of surety.

DANIEL E. GARGES,
Chief Clerk, E. D.

Signed and sealed in the presence of—

J. M. RYAN.
R. A. MOULDEN.
J. M. RYAN.
R. A. MOULDEN.

Approved:

CUNO H. RUDOLPH,
JOHN A. JOHNSTON,
W. V. JUDSON,
*Commissioners of the District of Columbia.*Attest as to Comm'rs, D. C.
WM. F. MEYERS.

58

Office of the
Engineer Commissioner of the District of Columbia,
Washington.

Sept. 17, 1912.

The Cranford Paving Company,
Washington, D. C.

Sept. 18, 1912.....	
Received	190...
Referred to	
Instructions	
.....	
Answered by	190...

Gentlemen:

In accordance with the provisions of the current appropriation bill in reference to the purchase and operation of a portable asphalt plant under the appropriation for repairs to streets, and in accordance with the terms of your contract, numbered 4794, for making

repairs to streets, you are hereby notified that until further ordered, repairs to the asphalt pavements throughout the District will be made by the Commissioners with a portable asphalt plant, under the above law after the nineteenth instant.

The work of resurfacing under your contract numbered 4794 is not affected by this notice.

Respectfully,

MARK BROOKE,
*Captain, Corps of Engineers, U. S. A.,
Ass't to Engineer Commissioner, D. C.*

R. L. B.

59

Copy.

A. A. Hoehling, Jr.,
Attorney and Counsellor at Law,
Washington, D. C.
1416 F St., N. W.

October 4, 1912.

To the Honorable
The Commissioners of
the District of Columbia.

SIRS:

On behalf of the Cranford Paving Company, I have the honor to invite your attention to its contract with you, numbered 4794, bearing date May 1, 1911, covering the matter of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia, for the period, July 1, 1911, to June 30, 1913.

Under date, September 17, 1912, Captain Mark Brooke, Corps of Engineers, United States Army, Assistant to the Engineer Commissioner of the District of Columbia, addressed a written communication to said Company, advising it that, until further ordered, repairs to asphalt pavements throughout the District of Columbia, would be made by the latter with a portable asphalt plant; this in alleged accordance with the provisions of the current appropriation bill, in reference to the purchase and operation of a portable asphalt plant under the appropriation for repairs to streets; the certain current appropriation bill referred to in said letter being the Act of Congress, approved June 26, 1912.

The letter above referred to simply put in official form a former and verbal notification by Captain Brooke to said Company, to cease doing patching repair work on Thursday, September 19th, and that the District would itself thereafter do such work.

On behalf of the above Company, I have the honor to invite your attention to the fact that said Company has a present, valid and existing contract, covering, (among other things) *inter alia*, the certain subject-matter above referred to, for the full period and term, July 1, 1911, to June 30, 1913; and that the refusal by the District to

permit said Company to do that work, during such contract period, as well the doing thereof by the District, is a breach by the District of its contract to that extent and in that regard.

The District of Columbia having, as above, notified said Company that it would itself do the certain work aforesaid, and that said Company would not be permitted to do the same, unless and until further ordered, the Company is, of course, unable to specifically enforce the observance by the District of its contract obligation in the above behalf; but, on behalf of said Cranford Paving Company, formal protest and objection is hereby made to the certain action above mentioned; and notice is hereby respectfully brought to your attention that the Cranford Paving Company now, and at all times hereafter, when and as the same may be or become necessary, will insist upon proper compensation from the District of Columbia, covering any and all damages to which it may consider itself entitled, by reason of the premises aforesaid; and that insofar as the District of Columbia may see fit to itself do and perform any of the work embraced in the certain contract aforesaid, it will do so at its own risk and peril,

and with full notice and knowledge of the fact that the
61 Cranford Paving Company does not, in any way, waive, but expressly reserves its right at all times to insist upon proper payment to it by the District, of such damage and loss as may be sustained by said Company, by reason of the breach of contract on the part of the District in the respect aforesaid.

Respectfully,

A. A. HOEHLING, JR.

Attorney for Cranford Paving Company.

H./S.

March 28, 1913.

Whereas, by contract dated the first day of May, 1911, by and between the District of Columbia, a municipal corporation, of the first part, and the Cranford Paving Company, a corporation, of the second part, the said party of the second part agreed with the said party of the first part, for certain prices named in said contract, to do such work of renewing, resurfacing and repairing asphalt and coal tar pavements in the District of Columbia as may be ordered, from time to time, by the Engineer Commissioner of the District of Columbia, or his duly authorized assistants, for a period in said contract named, upon certain conditions named, among others as follows:

"1. The asphalt to be used for said work shall be natural pitch lake asphalt, conforming to said specifications."

(Meaning the specifications mentioned in said contract.)

"2. The party of the second part shall, if ordered in writing by the Commissioners of the District of Columbia prior to April 1,
62 1913, carry on the work provided for in this contract for an additional term not to exceed one (1) year from July 1, 1913, for the prices hereinafter stated."

(Meaning the prices stated in said contract.)

And Whereas, the said party of the first part acting by its Commissioners desires the said party of the second part to carry on the

said work, provided for in said contract, for an additional term of one year from the first day of July, 1913, for the prices named in said contract;

Now, Therefore, the Commissioners of the District of Columbia in the exercise of the right reserved as aforesaid in the said contract to said party of the first part, do hereby order the said Cranford Paving Company, the said party of the second part, to carry on the work provided for in said contract for an additional term of one year from the first day of July, 1913, for the prices in said contract stated; and hereby serve a copy of this order on the said Cranford Paving Company as notice of the exercise, by the District of Columbia, of the right and option aforesaid, reserved to it by said contract.

CUNO H. RUDOLPH,
JOHN A. JOHNSTON,
CHESTER HARDING,

Commissioners of the District of Columbia.

Served the duplicate original of this order on J. H. Cranford, President and Treasurer of the Cranford Paving Company, this 29th day of March, 1913, at 10 A. M.

(Signed)

J. W. DARE.

63

Copy.

March 31, 1913.

To the Honorable Commissioners of the District of Columbia, Municipal Building, Washington, D. C.

SIRS:

We have the honor to acknowledge the receipt of your order, dated March 28th, 1913, directing the undersigned, The Cranford Paving Company, to carry on, for an additional period of one year from July 1, 1913, the work provided for in a certain contract, dated May 1, 1911, numbered 4794, and at the prices therein stated; said order being based upon an option to renew and extend said contract for said additional period of one year.

That contract was one for the renewing, resurfacing, and repairing of asphalt and coal-tar pavements in this District; and the right on your part to renew and extend the same was in respect of the contract work in its entirety, and not in respect of such parts thereof as you might see fit to require the undersigned to do.

The District heretofore breached the above contract by its written order, dated September 17, 1912, and by prior verbal directions and orders to the same effect, whereby the District itself undertook the making of repairs to the asphalt pavements with a portable asphalt plant. We brought this matter specially to your attention by letter from our attorney, Mr. A. A. Hoehling, Jr., dated October 4, 1912; to which, however, you have never made reply.

64 In now acknowledging your order, and in advising you of our acceptance thereof, we have the honor to advise you that the extension of said contract is undertaken and agreed to by us exactly in accordance with the terms of the original contract, un-

modified and unaffected in any way by any act on your part in violation or breach of said contract; and we do not hereby waive, but expressly reserve, and will at all times insist upon proper payment to us of damages for the failure to permit us to do the repair work under our said contract; and will equally insist upon our rights in that behalf in connection with the renewal and extension of said contract for the further period of one (1) year as above.

We have thought it proper to write you thus fully so that you may be fully advised that any breach by you of any part of our contract work under the extension period will be done by you knowingly, as has been the case heretofore, and with full notice of our claims in that regard.

Respectfully,

THE CRANFORD PAVING COMPANY,
By J. H. CRANFORD,
Pres. & Treas.

J. H. C./A. O. T.

Executive Office,

Commissioners of the District of Columbia,

Washington.

April 1, 1913.

Apr. 2, 1913.

SIR:

The Commissioners of the District of Columbia have received and will give due consideration to your letter of the 31st ultimo acknowledging receipt of order relative to continuing contract 4794
65 for one year from July 1, 1913.

Very respectfully,

WILLIAM TINDALL,
Secretary.

The Cranford Paving Company,
2620 E Street N. W.,
City.

Recommended for approval:

DANIEL E. GARGES,
Chairman, Contract Board.

E. D. 110065-1.

Approved:

F. H. STEPHENS,
Ass't Corporation Counsel.

Know all men by these presents:

That we, The Cranford Paving Company, a corporation duly incorporated under the laws of the State of West Virginia, with principal office at Washington, District of Columbia, as principal, and the American Bonding Company of Baltimore as surety are held

and firmly bound unto the United States of America in the sum of One Hundred and Forty-eight Thousand (148,000) Dollars, lawful money of the United States — America, to be paid to the said United States, for which payment well and truly to be made, we and each of us do bind ourselves, and each of our heirs, executors and administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 9th day of April A. D., one thousand nine hundred and thirteen.

66 Whereas, The above bounden, The Cranford Paving Company, by an instrument in writing under its hand and seal, dated the First day of May, A. D., 1911, contracted with the District of Columbia to furnish all necessary labor and materials, except as therein otherwise provided, and in a good, firm, and substantial manner, in strict accordance with the terms, conditions, and provisions of said contract, execute the work of renewing, resurfacing and repairing asphalt and coal-tar pavements in the District of Columbia as might be ordered from time to time, by the Engineer Commissioner of the District of Columbia or his duly authorized assistants, for a period from July 1, 1911, to June 30, 1913, and keep said work in repair for a period of five years from date of completion, as more fully set forth in said contract.

And whereas, The said Cranford Paving Company, agreed in said contract, if ordered in writing by the Commissioners of the District of Columbia, prior to April 1, 1913, to carry on the work provided for in said contract for an additional term, not to exceed one year, from July 1, 1913, for the prices above stated.

And whereas, The Commissioners of the District of Columbia, by an instrument in writing dated March 28, 1913, ordered the said Cranford Paving Company to carry on the work provided for in said contract for an additional term of one year, from the First day of July, 1913, for the prices stated in said contract.

And whereas, Said American Bonding Company of Baltimore became surety on the bond attached to said contract, dated May 1, 1911, in the penal sum hereinbefore set forth, under the obligations stated in said bond.

67 Now, therefore, The condition of this obligation is such that the said Cranford Paving Company, as principal, and the said American Bonding Company of Baltimore, as surety on said bond, have agreed and do hereby agree, that the obligation of said bond be, and it is hereby extended to cover all work done by said Cranford Paving Company, under the terms of said contract, for the additional term of one year from and after the First day of July, 1913.

THE CRANFORD PAVING CO., [SEAL.]

By J. H. CRANFORD,

President & Treasurer.

AMERICAN BONDING COMPANY OF
BALTIMORE, [SEAL.]

By THOS. DE LASHMUTT,

Attorney-in-Fact.

Signed and sealed in the presence of—

J. L. JOHNS.
VIRGINIA COLLINS.
J. L. JOHNS.
VIRGINIA COLLINS.

Attest:

H. S. HOUGHTON,
Sec'y.

Approved:

CUNO H. RUDOLPH,
JOHN A. JOHNSTON,
CHESTER HARDING,

(Commissioners of the District of Columbia.)

Apr. 10, 1913.

File No. 77977.

Approved as to sufficiency of surety:

DANIEL E. GARGES,
(Chief Clerk, E.D.)

68 *Stenographic Record of Hearing Before Auditor.*

Filed March 27, 1920.

* * * * * *

JOSEPH H. CRANFORD, President of the Cranford Paving Company, the plaintiff, called as a witness, being duly sworn, testified as follows:

Direct examination.

By Mr. Hoehling:

* * * * * *

A. We did make special preparations to conduct this particular branch of the contract. As well as I remember from the records, we made a certain alteration to our plant, which was, you might say, an auxiliary plant. In other words, we could conduct our repair work without using our entire plant. There are certain parts of the year when construction work cannot be made, but repairs can, so we expended \$6,700.00 in order that we might economically conduct the repair branch of this contract. We also purchased two what we term Baby steam rollers. In prior years we had operated these repairs with hand rollers, operated by men, and we thought we could better handle it with steam rollers, especially adapted and built for that purpose, and we acquired two of these rollers at a cost of \$2,500.00—\$1,250.00 each. Those rollers are only adapted to that particular work, so they were rendered useless to us when the

repair work was taken away from us. Under that general contract, we made contracts for the supply of material, and especially a contract for the supply of refined asphalt which at that time we brought from the harbor of New York, it having been brought there from Trinidad, and made a fixed charter for vessels to bring those cargoes here, with the result that we had a great deal of material on hand when this work was taken away from us, and we were very much embarrassed for a while because we had a great deal of material on hand and it became necessary for me to cancel some of the charters for the barges, for which I afterwards had to pay a penalty.

Q. What did you pay?

A. As I remember, it was \$275.00, and the shippers agreed to pay \$75.00 of it. It cost us \$200.00 to cancel the charter.

Q. I understood you to say you had on hand an excess amount of material?

A. Of course, it was good for the work, but to carry that amount of material on hand was unnecessary.

Q. How long did you have to carry it?

A. I presume it took us a year to work that off.

Q. In the meantime, had you paid for it?

A. We had to pay for it; yes.

Q. In the same connection, Mr. Cranford, what about the premium on the bond that you had to pay? How was that fixed?

A. The bond on this specific contract was \$148,000.00. The premium, however, on a bond is measured by the estimated amount of the contract, that is what the work would in total amount to, and the estimate on the part of the Commissioners for this contract was—May I refer to the figures?

Mr. Hoehling: I presume there will be no objection to that.

Witness: The Commissioners estimated the work involved amounted to \$296,000.00 a year, and in fixing bond for the two year period \$592,000.00, and taking twenty-five per cent of this amounted to \$148,000.00 which was the bond stipulated in the contract. The rate which we paid was \$6.25 a thousand, or \$1,850.00 a year. I presume it is proper for me to state, however, that in the third or extended contract, although the same bond was incorporated in the contract, the Commissioners gave me a new estimate of the amount of work involved, in order that I might fix my bond premium, and they gave me \$186,000.00, that is eliminating the repair items, and I paid the same rate per thousand, which was \$1,275.00 for the third year.

Q. How much premium was paid by you for the repair work which was subsequently taken away from you?

A. For a period of nine months, and the average estimate of the Commissioners' office being \$9,000.00 a month, would have been a total of \$81,000.00, on which we paid a premium for work we did not do.

Q. What does that amount to?

A. \$506.25.

Q. State whether the Cranford Paving Company, under this contract of 1911, entered upon the performance of the work—all three kinds of the work embraced in it—and if it did, when and under what circumstances performance of any part of the work was interrupted.

A. We did undertake all the work, and we conducted that work until September 19, 1912, when we received a written notice from the then Acting Engineer Commissioner to cease operations on the repairs.

71

* * * * *

Cross-examination.

By Mr. Stephens:

Q. When you entered into the performance of that work for the third year, you understood then, of course, that you would not do this repair work?

A. I do not know whether that was set forth. I do not remember it was. I think the Commissioners simply stated they wanted to extend that work for a period of another year.

Q. You knew you would not get repair work?

A. I was quite sure. We had not had it for the previous nine months. I particularly, in accepting the extension of that contract, called the Commissioners' attention to the fact that I expected to do all of that work and held them responsible.

Q. That was to preserve your legal rights?

A. Yes, sir.

Q. Not with the expectation that you would get the work?

A. No.

* * * * *

72

Motion by Plaintiff for Judgment.

Filed May 6, 1920.

* * * * *

Comes now the plaintiff, by its attorneys, and moves the Court for judgment herein against the defendant in the sum of Eighteen Thousand forty-one 06/100 Dollars (\$18,041.06), being the amount found and stated by and in the Report of the Auditor filed herein, together with the costs of suit, (the same to be taxed by the Clerk), and which report was confirmed by the Court, on May 6th, 1920; and, for grounds of motion, states:

1. The declaration filed herein alleges a certain contract, in writing, under seal, entered into between plaintiff and defendant, covering the work of renewing, resurfacing and repairing the asphalt and coal-tar pavements in the District of Columbia, (commonly

referred to as contract for making repairs to asphalt pavements), during certain periods therein named; it further alleges the breach by defendant of said contract covering the item of repair work during certain of the contract period; and, finally, claims damages from defendant, as compensation for the breach, in the sum of \$25,000.

2. To that declaration, defendant interposed demurrer, based upon the proposition that, inasmuch as Congress had authorized the District of Columbia to purchase a portable asphalt plant and to use it in doing such of the repair work to asphalt pavements in said District as it might be able thereby to do economically, the defendant is not liable to plaintiff for said breach of contract.

3. The demurrer just referred to was fully argued orally before the Court upon the question of law stated, and the same was overruled by the Court; thus settling the law of the case insofar as concerned its future conduct and disposition by and in the trial court.

4. Thereupon, the defendant filed pleas herein, (1), that defendant did not execute the said contract in manner and form as alleged; and, (2), that plaintiff has not been damaged to the extent claimed by it in said declaration.

73 5. Issue was joined upon said pleas, and the cause noted for trial.

6. Thereupon, upon motion duly made, the cause was referred to the Auditor of this Court, October 31, 1919, under the provisions of Section 254 of the Code of Law for the District of Columbia, with directions to audit and state the accounts and dealings between the plaintiff and defendant, and, thereafter, to make return thereof to the Court.

7. The report of the Auditor, under said reference, was filed herein, March 27, 1920, and, no exceptions thereto having been filed, the same was ratified, approved and confirmed by the Court, May 6th, 1920.

8. By that report, every issue of fact necessary for the determination of the cause, as applied to the law of the case, has been found, and there is no issue of fact for submission to a jury.

9. All matters and issues of fact thus having been ascertained and determined, and the law of the case having been fixed, so far as concerns the trial court, as above, judgment for plaintiff should be entered herein in the amount so found and reported by the Auditor.

HOEHLING, PEELE & OGILBY,
Attorneys for Plaintiff.

Washington, D. C., May 6, 1920.

To Francis H. Stephens, Esq.,
Corporation Counsel, D. C.

Dear Mr. Stephens:

Please take notice that motion for judgment, of which the above is a true copy, will be presented to the Circuit Court to which the same may be assigned for hearing, on Friday next, the 14th inst.

HOEHLING, PEELE & OGILBY,
Attorneys for Plaintiff.

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Supreme Court of the District of Columbia.

Friday, June 4, 1920.

Session resumed pursuant to adjournment, Mr. Justice Hitz presiding.

* * * * *

Come now the parties hereto by their respective Attorneys of record; thereupon the motion of plaintiff filed herein May 6th, 1920, for judgment against defendant for the amount found due and stated by the Auditor in report filed March 27, 1920, coming on to be heard, it is considered that said motion be, and the same is hereby granted. The defendant prays an exception which is here noted.

Wherefore, it is considered that plaintiff recover of defendant the sum of Eighteen thousand and forty-one and 06/100 dollars, (\$18,041.06), with interest thereon from this date, being the money payable by said defendant to plaintiff by reason of the premises, together with the costs of suit, to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment, the defendant by its Attorneys in open Court, notes an appeal to the Court of Appeals of the District of Columbia.

75

Designation of Record.

Filed June 18, 1920.

* * * * *

The Clerk will please prepare a transcript of the record in the above-entitled cause for the Court of Appeals, consisting of the following:

1. Declaration.
2. Demurrer.
3. Order overruling demurrer.
4. Pleas.
5. Joinder in Issue.
6. Motion to refer cause to Auditor.
7. Order referring cause to Auditor.
8. Report of Auditor, and Stipulation attached.
9. Exhibits, No. 3, Adv't. for Proposals, Instruction to Bidders, and Specifications.

No. 4, Proposal.

" 5, Acceptance.

" 6, Contract.

" 7, Bond.

" 8, Letter, dated September 17, 1912.

" 9, " " October 4, "

" 12, Order " March 28, 1913.

" 13, Letter " " 31, "

" 14, " " April 1, "

" 15, Bond covering extension period.

10. Extract from testimony of Joseph Cranford before the Auditor, on page 29 (copy attached).

11. Extract from ditto, on page 12 (about middle of page), beginning with the words,

“A. We did make special preparations,” etc., and ending on page 14 (below middle of page), with the words:

“to cease operations in the repairs.”

12. Motion for judgment.

13. Judgment for plaintiff.

14. Appeal in open court.

15. This designation.

F. H. STEPHENS,
Attorney for Defendants.

Assignment of Errors.

Filed June 24, 1920.

* * * * *

Now comes the defendant, the District of Columbia, in the above-entitled cause, and assigns for errors therein,—

1. The action of the court in granting judgment against the defendant for the unexpired term of the original contract for two years.

2. The action of the court in granting a judgment against the defendant for the extended term of the contract, beyond the original period of two years.

3. The action of the court in granting any judgment against the defendant.

F. H. STEPHENS,
Attorney for Defendant.

77 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 76, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 58247 at Law, wherein The Cranford Paving Company, a corporation, is Plaintiff and The District of Columbia, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 7th day of July, 1920.

MORGAN H. BEACH,
Clerk.

E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3423. The District of Columbia, a municipal corporation, appellant, vs. The Cranford Paving Company, a corporation. Court of Appeals, District of Columbia. Filed Jul- 9, 1920. Henry W. Hodges, clerk.

(3423)

